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IN
DESIGN
IN ART AND MANUFACTURES.

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DESIGN

IN ART AND MANUFACTURES.

BY

T. TURNER,

OF THE MIDDLE TEMPLE.

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PREFACE.

Property in form, distinct from that of the material substance or article in which it was exhibited, was, till within a few centuries, quite unknown. It has of late years attracted much notice, various arts having facilitated the multiplication of copies, and Government has paid attention not merely to the legal protection of Design, but to its encouragement by schools of art, museums, &c. while it is not only patronized but practised by Royalty itself.

Legally the subject has generally been treated of as an appendix to or variation of literary copyright, or of patents. It has, however, an independent character distinct from either of these. 1. In literature ideas are expressed by letters representing vocal sounds; the shape of the black marks, dots or strokes on the paper being immaterial. But in an engraving or a pattern, these are the language of the author, and subject of the right. 2. A patent, again, is properly a right to an art or trade, a process, method or operation, and the forms of machines and vessels are described by the patentee not as the

invention, but to show "the manner in which it is to be performed." An equivalent apparatus might be substituted without altering the principle of the invention, but it might be a different form and configuration.

As further legislation is anticipated, while the existing laws are likely to obtain judicial development, the Author contemplates a return to the subject, and will esteem as a favour the communication through the publisher of additional information.

Postscript.—The report of Lowndes' case has not reached London. An imperfect account in the Mechanic's Magazine seems to show that a design to be first lithographed, and then executed by the needle, *was* duly registered under Class 10, and even if the class were a wrong one, that the right was not affected by such error.

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Note.—Of the above cases fourteen were sustained, nine failed.

STATUTES.

COPYRIGHT IN DESIGN.

SECTION I.

THE VALUE OF FORM.

A FORM may have a value in a variety of ways—both as a means, and as an end. As to the first, it may be suited to a particular material or substance in which it is to be executed, as straight lines for masonry, curved for metal castings, &c., a linear design for a copper plate, a shaded drawing for lithography or etching, and in fact every mode of imitation requires a translation of the design into its own language, and every change of material employed varies the mode of operation. When a calico pattern is to be printed by the cylinder engine, its proportions must be so adjusted as exactly to occupy the circumference of the cylinder, and this sometimes involves the redrawing the pattern five or six times. This part of the subject affects the producer, but a form must also subserve the purpose and object of the consumer or user. It may be useful, like an instrument or machine; or purely ornamental, a picture or decorative, retaining the value in use, and adding ornament to it, as a dress. With or near to the second class we may place the arts of amusement, toys, puzzles, &c. The share of the artist in the production of the form may be more or less. The sculptor converts a shapeless mass into a florid group of fruit and foliage, while the materials for the bouquet are supplied by nature, and all that art adds is the string that unites them. The arts of imitation

vary from the exact reproduction of nature by a daguerrotype, to the refined abstraction and composition of the historical painter. The value of a form may lie in its connection with some ornamental object, though itself devoid of beauty, as the lay-figure which sustains the artist's drapery, the wirework for the twining plant, and the outlines of tesselated work which facilitate the harmonious collocation of colour. Many artists, indeed, as Turner, only employ form in this dependent manner. Decoration may give an entire shape to an article, as a vase, urn or cup; or may leave the general form untouched, and spread embossed or chased ornament in relief upon the surface. The useful purposes obtained by form are innumerable; it gives us stability in the arch, motion in the wheel, collects power in the steam-cylinder, stores it up in the fly-wheel, applies it in a tool, gives us optical effect in a prism, and acoustic in a bell. Form in these is useful in itself; it may also be a means of getting other forms, as the mould for casting, or it may allow of the most economic use of the material in getting the largest veneer from an ornamental log of timber. Lastly, form represents, records and communicates ideas by sounds in the alphabet, or resemblances in maps, diagrams, &c.

Now, as in every object of human production some particular means is employed and for some particular purpose, and each means and each purpose require the restriction of the shape employed within certain limits, we arrive at individual and isolated forms capable of variation within certain limits, and impracticable beyond them. Thus, in a decanter, the centre of gravity must be kept low and the base wide, to give stability; a certain height, however, is indispensable to its appearance. The grasp of the hand, and the facility of pouring out and filling, cleaning and stoppering, regulate the neck; and the design, besides fulfilling these conditions, must be practicable in a material which receives its first shape by blowing into a mould, and its surface from the grinder; and the number of ornamental shapes that combine all these requisites

is very limited, and if any change, however trifling, be made in the limitations, the whole design must be completely recast. Suppose it is to hold water, and the stopper dispensed with, the harmony of proportion and linear combination is gone. Change the material for earthenware, and the effects of refracted light and prismatic colour, which made angular forms beautiful, are lost, and other forms of ornament must supply their place. As the zoologist identifies a species by a single bone, so every portion of a perfect work of art requires a special adaptation, and each type or model of a design forms a distinct species; and not only must all the conditions be provided for, but new and unforeseen contingencies may prove fatal; as when Davy's protection for copper sheathing failed, only because it did not deter the accumulation of sea-weed and barnacles. Among the conditions are a certain state of allied arts of production. The art of print engraving requires an art of printing; this only follows an ample supply of paper, and this is ultimately obtained from the loom; and thus every age has its own novelties and inventions, which before were useless if not impossible. From a good design any deviation is an injury, and the amount of injury increases in rapid ratio. A printed flower-pattern for a calico dress is too small for a furniture; if enlarged, the scale will be unnatural. In a warmer fabric it will not suit the season; in a costlier one it has to meet the taste of another class of buyers. It cannot be woven with sufficient precision of outline, and still less is it fit for modelling into solid form; and individuality in ornament is also required by the demand for novelty, of all the sources of beauty the most indispensable. The design, like the animal, has a period of existence; its successor must exhibit a clear and distinct difference of character. As, however, innumerable patterns may exist in a single style of ornament or a single branch of art, so the duration of the latter includes many generations of individuals, and by these the perfect development of the style is gra-

dually obtained. When a mode of combining the colours of the calico printer is introduced, a certain number of years may elapse before the designer thoroughly understands the capabilities of the new material. He discovers this by a course of experiments on individual designs; of course very valuable combinations, at once simple and striking, are rare, as in all the arts and sciences. In calico printing it is said that there have been four styles distinguished by their success—the rainbow, the diorama, the wave and the net (specimens of them are given in Mr. Tennent's work). The diorama, a simple arrangement of shades, sold to the amount of 25,000 pieces in one day. This principle of the unity of design must not be pushed to an extreme; we do not require a distinct pattern for every individual gown in the kingdom, though no two wearers of gowns be exactly similar in person, but as regards the adaptation to the kind of article, it will certainly be more and more appreciated as a rule of taste. A fashionable architect of the present day would hardly, like Gibbs, design a lady's dress with portions of the five orders, Doric, Tuscan, &c., though in our own time it is said that a calico for a dress was decorated with a marble pattern, an idea which the narrator proposed to carry out by trimming it with ammonites and saurians.

All considerations of correctness, however, yield to that of novelty; with this to recommend it, a poor design will sell; without it, the best design has no market value. If a fashion be widely diffused, the more rapidly will it become tiresome by repetition, and then the pride of wealth comes in aid of taste to pronounce it mean and parsimonious. Some nations, as the oriental races, are less capricious, and the poorer classes are checked by motives of economy; but where mechanical means supply variety in cheapness and abundance, the love of variety quickly rises up to the same point. The shippers of printed goods to foreign markets do not send a pattern twice to the same place. The fashion will of course take a certain time to

travel round the globe; what is unsaleable in England may be in time for the Indian market. Of course the duration of any thing of a fixed nature is more durable than a movable. We cannot change our rooms as frequently as our dresses. Not only are the former more costly, but being less seen by others in different places, they are longer in becoming vulgarized. Thus a "garment" calico lasts a season, a furniture pattern three or four years or much longer. The demand for novelty may at a certain interval be supplied by a revival, if the prior appearance is forgotten, and the specimens of it have perished. The periods of these cycles of taste are uncertain; one design in calico, popular in 1801, reappeared in 1841; another of 1816 in the present year. It is the practice of the designers to keep their old patterns, not so much, however, for absolute reproduction as for modification, to suit both the taste of the purchaser and the probably improved facilities of execution. There can, however, be little doubt that there are periodic fluctuations of taste, on the same principle that the eye, after looking at a red object, enjoys the sensation of green, and will even itself produce a spectrum of that colour. The consideration of the questions of novelty and unity will throw light on the much-debated subject of originality. Some of the opponents of copyright were almost inclined to annihilate its existence. Mr. Brooks said that in all his experience he had known only two original patterns, namely, the wave and the diorama; that is apparently, he thought, a pattern original, when it was absolutely non-pictorial,—when it suggested no object in nature to the beholder. He denies the originality of a rosebud pattern for instance, because it represents the flower. But no one contends that a design, so far as it coincides with the reality, is original, nor yet that the lines or dots of the pencil or engraving have any claim to the title. The rosebud is open to all the artists in Europe, if they choose to sketch from it. The art of drawing is pretty generally diffused. You may take your own pencil, and make your own drawing;

and if you do try the experiment, you will find that, besides pencil strokes and rosebud, there is another matter to consider,—the union of the two; and this is exactly the point wherein originality is claimed. A subject has been given to two men, both professional designers; both requested to convert a very simple natural subject into a certain artificial one; and the results have exhibited no sort of similarity in effect, and if 10,000 men had tried it, every one of their productions would have shown the peculiarities of the artist's style, just as the handwriting of a signature identifies the writer. The same gentleman states that he instructs his designers "not to copy, more than every one is a copier by taking the ideas which various patterns present to his mind, and by adapting them anew to constitute a new pattern," which, however, he maintains to be not an original; and still further on he distinguishes improving an idea from copying. Now, provided the independence and novelty of the thing produced be admitted, and that it embodies and makes permanent a certain portion of personal skill and labour by the designer, it is not worth while to stand out for the *word* originality. It is more convenient indeed to use words in their ordinary sense; but there is no necessity for it. If the new design be wrought out of previous ones, artificial sources in place of natural ones—and, in fact, this constantly is the case in all kinds of ornament —the rule remains the same,—the parts in either case exist previously; the combination is the creation of the artist. "The Ancient Mariner is an original poem, though all the words are to be found in Johnson's Dictionary." Competent and experienced men say that they could always and readily distinguish whether a design were a mere imitation or an independent work, owing of course to the principle of unity already alluded to. It is as impossible, they say, for two men working independently to "think of the same thing" (see the "Critic"), as for the kaleidoscope to repeat a configuration. The sources of design are inexhaustible, the arrangements of which a "style" in calico printing is

susceptible are infinite in number, and all preserving one character, all formed by the combination of similar objects, and these placed in the same general disposition on the cloth; but the available combinations are limited in number. The materials are open to all the world. The genius or luck or labour of the artist is the only means of rendering them valuable. The action of an intelligent agent is implied in the word "design."

An interesting branch of the theory of invention is the degree in which it admits of division of labour, which particularly comes into play, where, as in manufactures, in printing and engraving, a large number of purchasers are to be supplied. In the higher arts, as painting or sculpture, each individual works by himself. It is an exceptional case, when one artist paints the landscape and another supplies the cattle; and though the fashionable portrait painter turns over his background to a subaltern, and the sculptor does not take up his chisel till most of the form is eliminated, yet no definite lines of demarcation separate the successive processes. But when each single flower shape is to be scattered over acres of surface, nothing but an elaborate organization of labour can avail to the performance; and thus in a single factory, the bleacher and the printer, dyer and graver, designer and colour-maker, to the number sometimes of 1000 individuals, pursue their calling under the same roof. We may imagine a period when every establishment will have its professor of æsthetics, to correct the taste of the designers,—its museum of antiquities and natural history, to supply him with themes. Even now the designer often receives his instructions from his employer, who again relies on the suggestions of the retailer; and in many branches of manufactures the designer is quite distinct from the *metteur en carte* in weaving figures, or the engraver in printing them, and the mechanical processes influence the ornamentation; thus the characteristic peculiarity of the cashmere pattern was found on investigation to be due to the mode of its fabrication. Again, the favourite diorama pattern resulted from an acci-

dental impression of a stripe on a pleated piece of cloth, and Lane's net is attributed to an eccentric lathe. Such results of mechanism may advantageously be combined with manual or artistic operation, as of old in the dominoterie the outline printed by a block was filled up by hand; and this combination of higher and lower degrees of mechanism is seen in the combined use of cylinder printing, with the old fashioned block to put in a few additional colours. Grounds produced by eccentric turning receive flowers, &c. drawn by the designer; and in the higher classes of engraving the parallel lines are supplied by machine ruling. In the beautiful medallic engraving, after the artist has supplied the model, the rest of the translation into the language of linear surface is wholly mechanical. The perfection of work executed by machinery is familiar to all; but even this is sometimes a defect, and in lace, for instance, a special provision is introduced into the mechanism to distort its action occasionally, and give the manufactured article some such blemishes and irregularities as might arise from human accident or carelessness.

On the employment of machinery the question of copyright depends. Copyright is hardly perceptible while books are multiplied by manual art; but it is very important when printing presses and machines are in use. It was unimportant when the needle added ornament to the hangings or vestments, and all-important when the design is given by the engraved cylinder. An invention of the most trivial intrinsic nature becomes weighty by multiplication, and the importance of another novelty individually valuable may yield pre-eminence to it. A patent for a button has often paid better than one for a steam engine. It was the boast of the Penny Magazine they were the first patrons of a superior style of wood-cutting. Nor is at all unlikely that we may one day see the manufacturer giving a commission for a dress pattern at as liberal a rate as a nobleman extends to a royal academician for a picture. The picture is for one, the pattern is for 10,000.

It must hereafter become an important branch of the science of taste, to ascertain what kinds of beauty best admit of repetition by mechanical means. To what extent this will extend it is hard to say. It involves two points for estimation :—first, the number of purchasers for a single pattern or ornament, and perhaps the number of repetitions that weary the eye of each purchaser; and secondly the degree of repetition occurring in the article itself. In a Greek temple all the capitals are alike; in a Norman one they are sometimes all different, while a dress pattern may consist of almost endless repetition of a small spot or check. A single Manchester factory boasted of a dozen miles of calico in a single year. The fashionable arts, too, like newspapers, require not only multitudinous copies, but those produced with the utmost rapidity. Thus the cylinder engine operates in two minutes on an amount of calico equal to that covered by 448 applications of the old block. In a complicated pattern of different colours, five cylinders will do the work of 2240 blockings almost instantaneously. In twenty-five years the time of getting up a design for calico was stated to have been reduced to one-quarter of the time, and a design for embroidery to require but the twentieth portion.

The powers of multiplication vary in different branches of art; thus it is said that a woodcut will print 100,000 impressions well, while a copperplate, though seemingly so much more durable, gives (owing to the friction in cleaning the plate for each copy) only 1500 perfect ones, 1500 defective, and perhaps 1000 more grey and feeble ones. Even a steel-plate suffers after 10,000 copies. Mr. Babbage, however, asserts that he had seen a first impression from steel, and an eighty-thousandth one presenting no difference sufficient to identify the proof copy. When further multiplication, however, is desirable, a variety of processes are available for copying the original, not on paper, but metal, and so obtaining as many originals as are required. Again, as the same pattern is repeated

again and again on the calico cylinder, the practice is to engrave a small cylinder first, and then print from this into the larger one while soft, and afterwards harden it. In this manner the unit engraving is executed fifty times on the cylinder which actually prints. In Mr. Babbage's work will be found an illustration of six successive operations of copying the impression, in each case becoming in turn a type for the succeeding operation. By such means the cost of the design, even when the artist is fairly remunerated, is quite unfelt by the consumer. One witness estimated it at $\frac{1}{3\,5\,2}$nd of the whole cost of the manufactured article in calico printing, in which the design might cost from five shillings to twenty shillings, the engraving from five pounds to ten pounds; but the whole dress would cost but a few shillings, and the proportion of cost of design on this would be a very small fraction; and this cost too is lessened by every new improvement, an engraving costing ten pounds in 1808 being now obtainable for two pounds. It is when production on a large scale is the object that the English gain the superiority. They concentrate their genius in the great inventions, and this, together with their mineral wealth, renders them unrivalled, and almost unapproachable where machinery can be employed. Railroad inventions are valuable property; and it is said that of 260 French patents for rails, &c. the three or four that were good for anything were English. In patterns our *dessins lourds* find no favour in any country. Now a design till recently was not property at all. Mr. Lockett spoke of 300 engraved cylinders executed (our execution is indisputable) for France, for Germany, Prussia, Russia, Silesia, Saxony, Italy and Spain. Six indeed were English, the rest were French; but where mechanism applies, that is in the "eccentrics," our designs take the lead. In concluding this part of the subject, it may be remarked that it is mechanical repetition that developes a commercial value in form in itself, both as an independent thing as well as an adjective quality. In the latter case it does most mate-

rially affect value. A pound of steel is worth twopence; a watch chain made of it (the little chain that coils round the fusee) is also worth twopence. Now the twopence worth of iron will make 20,000 twopence worths of chain, and the change in the value is merely a new form, giving new uses and properties. It was said of an engraver, that on six inches of paper he would draw up 20,000 men, and confer immortality on Alexander the Great and Louis the Fourteenth. Still the form is inseparable from the metal, so far as the public are concerned. To the chain-maker the form has an independent value; apart from any particular chain it might be a patent or design. The watch buyer, however well he might know the form, would be no nearer the attainment of the chain; but to a man capable of working in metal, that form is a means of buying iron at twopence a pound, and selling it for 40,000 pence.

Forms, considered in themselves, are of various kinds; they are linear, superficial, or solid. Among solids, form in relief is distinguished from that in the round, and they may be simple or aggregated, as a woven fabric, for instance. A solid, again, is simple and rigid, as a tool; or consisting of pieces capable of various positions relatively to one another, as a machine. The size varies from the smallest point attainable by the microscope to the limits of the astronomer's subjects. Forms too minute for appreciation belong to chemistry.

Forms must also be considered as to their relation to one another; one may be a variation of another: by addition, subtraction, or alteration; it may be a combination of two or more, or a portion of one; and any number of forms may be more or less similar, and either stand apart from one another or graduate by imperceptible degrees. The important point to attend to is, that geometric differs from valuable, economic or commercial form; a mere outline, by an old master, ranks high in the scale of valuable form; a simple arrangement of stripes may be made much of by the manufacturer; a round piece of metal, with a pinhole in the centre, when turned to account

for a particular defect of vision, is registered as a new form, while a highly finished or an elaborate piece of machinery may be held a mere imitation.

SECTION II.

HISTORY OF THE SUBJECT.

In briefly noticing the history of the subject, it may be remarked that the subject has till lately only occupied the attention of legislators and jurists at uncertain intervals; and although the subject has been more frequently renewed and agitated of late years, it has been but little studied by the jurist or statistician; and information respecting the subject is widely scattered, and must be sought for under any head rather than its own.

The earliest mention of anything analogous to copyright is stated to be at Venice in 1469, and that something similar existed in Germany in 1486, in combination with a censorship of the press. There is no trace of it among the elaborate provisions of the civil Roman law. In this country an act passed in 1640, contains (it is said) the first mention of "owners" of copies of books, though it would seem that the law had indirectly legalised rights which at first existed only among the members of the Stationers' Company. Patents for invention were already in existence, but the nature of such an invention as would introduce a new manufacture into the realm could seldom be capable of definition as a form. During the reign of the Stuarts the fine arts received more or less patronage, and engraving, medalling and other reproductive arts began to supply the means of bringing high art into the company of limited fortune. The manufacture of woven fabrics, already extensively developed as one of the useful arts, began in the seventeenth century to offer a field for the application of printing to decorative purposes. Its first locality was Augsburgh. In 1676 calico printing is said to have reached England, and to have been practised near London in 1690. There was, by authentic records, a print work at Richmond, esablished by a French-

man. The first distinct law upon the subject of form is the act of 1735, for the protection of engraving. Engravings had for some time attained a high rank in public estimation. George the First had knighted the engraver of the cartoons; but line engraving had been most cultivated, and the amount of skill required to imitate a plate must have nearly equalled that of its first production; every stroke of the graver would have to be repeated, so that the pirate could hardly undersell the original; and from the costliness of this style and its refinement few could afford to purchase, and few, perhaps, would appreciate. As so much talent had to be spent by the engraver in transferring the forms to a new medium from the canvas to the copperplate, the value of the right of engraving to the owner of the picture was small, and the picture itself, whether a portrait or work of imagination, was executed solely as an individual work of art. Gradually, however, it became a practice to publish small prints, not for the profit on them, but to assist in spreading the reputation of the painter, and this was done in the case of portraits of public men. Of course the name of the artist was not omitted, it was attached to the corner to secure, not as now the property in the print, but the fame of the picture. The diffusion of some new mechanic or chemic arts of engraving or etching facilitated this. The proprietors of these would not have objected to piracy, which would have spread their reputation more widely; an argument which the opposers of the recent design act were willing to apply to calico printing, urging that by printing a house's patterns they showed the superiority of the house's taste; a service which the pirated parties obstinately refused to consider a compensation for the pecuniary loss.

One of the artists of the day, Hogarth, was too original in style and subject to be appreciated by the picture connoisseurs of the day, while the sovereign absolutely took offence at them; but the public, the middle classes, could all understand his fertile invention, his popular subjects, and his power of characteristic form. To this class, there-

fore, he turned for support; unlike his predecessors, he painted purely for engraving. Himself an engraver, he was able to expend all his genius on such a style of representation as admitted of reproduction in every copy of the prints. Here, then, was valuable copyright design; previously to this there had been only two printsellers in London; now piracy became profitable, the popular nature of his subjects made price the only limit to the markets, and the arts of etching, &c. enabled the pirate to escape this barrier, and copies of Hogarth's works were sold in every part of the country. Hogarth convened a meeting of professional brethren, and obtained the first act in 1735. It especially refers to engravings etched or worked in mezzotinto or chiaroscuro, and relates to inventing or designing as well as engraving historical and other prints; while a subsequent clause extends the benefits of the act to some plates about to be engraved by John Pine from the tapestry in the House of Lords (since consumed), though not designed by him. It provides for the proprietor who engraves or causes to be engraved; and Hogarth was in the habit of employing engravers. The prints and plates are forfeited, and are to be damasked and destroyed. The act was in some respects modelled on the literary act (that of Anne), only half the period of enjoyment was claimed, viz., fourteen years, but neither the registration nor the gratuitous delivery of copies for public libraries were covenanted for; nor was there any provision for fixing a price by the government. The "author" of the literary act is replaced by the inventor, designer and engraver. The words "no longer," which, in reference to the duration of the term, led to so much discussion at a subsequent period, are not in this act. In 1767, thirty-two years afterwards, the second act on our list occurs. Some of the greatest English engravers were then living, Woollett, whose print of the death of Wolfe brought in 15,000*l.*; and Strange, whose Niobe in 1760 was the first English work of high reputation, and produced a profit to

the publisher of 2000*l.* The engraver, who retouched the plate repeatedly, received 100*l.* and an additional 20*l.* Its fame was European; and at this time English engravings held a high character abroad, and the exportation of prints is said to have amounted in some years previously to the war to 200,000*l.* Under the former act the case of Blackwell had occurred; and although liberally construed in favour of the inventor, it may have thrown doubt on the extent of the act. In the new act, which professed to amend the old one, a private object was also effected, prolonging the copyright of Hogarth to his widow. The general term was also altered from fourteen to twenty-eight years. Jefferys and Harrisons' cases had shown some difficulties in the working of these acts; and in 1777 the third engraving act was passed. It recites that the two former acts had not effectually answered the purpose for which they were intended (rather a common case unluckily with acts of parliament), and gives additional modes of redress to injured parties.

In this reign the national value of the useful and ornamental art was more than ever felt. Watts's grand invention had laid the basis on which Arkwright and others built the factory system. Wedgwood and others enabled us to export various produce to every part of the globe. The nation, with the monarch at their head, encouraged the arts both by legislative protection and positive bounty. The Society of Arts arose; honours were bestowed on Arkwright, and the patent law was, though laboriously and slowly, expanded and liberalized by the judicial construction of it, and the breaking down the prejudices of the jury class. Ornamental design, 1787, now becomes a subject of legal right. It had been established in France in 1737 for the benefit of the silk manufactures of Lyons, and the repeated renewals confirm the importance and success there; and that country has the honour of first recognizing the claims of form, though England had taken the lead in patents. The protection was given for two months only,

and applied to linen, cotton, calico and muslin (vegetable materials), the only decorative arts at that time voluminous enough to require protection. As in the case of prints, the name was to be attached to each end of each piece, the period dated from publication, and the act lasted only for a year. We may presume that the experiment led to no objection, and was efficient enough to satisfy the promoters, as they obtained a renewal of it, altering the time to three months. The former provisions were said to be enacted for the encouragement of the arts of calico printing, and in 1794 they were declared to have been beneficial and made perpetual. The acts, like those of engraving, give damages and forfeiture of the blocks and plates, but provide for costs to a defendant harassed by vexatious litigation, and the seller is not liable unless aware of the nonconsent of the owner. The right went at once to the proprietor whether or not he were the "inventor and designer" of a new and original pattern, &c.

Toward the latter part of this century several cases occurred under the engraving acts, by which their formalities and remedies, and other technical points, were adjudicated on; the mode of attaching the name led to some discrepancy. The general tendency of the decisions was to blend, as far as possible, the three acts into one.

In 1798 another branch of the fine arts obtained special recognition. The art of sculpture has never been a favourite with the nation, at all events as an ideal art. Those branches which have been most patronized have been the representation of individual nature, portrait, statues, and busts, and perhaps the more aesthetic branches of the art have generally owed their position in our public buildings to a connection with individual representation, as in monuments, &c. And it is a strong argument against the independence of art or patronage, that in this, the remunerative, branch of statuary the English occupy as high a rank as any nation. Busts of private individuals are not likely to have much value as copyright, but busts of great men have a general interest and value; and in fact the

only case in which the act ever was applied was that of a bust of Fox. The want of demand for copies is the main prevention to piracy in this art. The means of reproduction by a cast are very simple and merely mechanical (at least after a single copy has been obtained), and the same fact accounts for the limited application of the act. Such ornamental casts as are most in request derive no value from the license of the original designer, but are taken from foreign works of art, or such as have been dedicated to the public by exposure, or indeed are public property. There is little skill in the preparation of the type mould, which corresponds to the plate of the engraver, unless perhaps where the scale is reduced.

In the very first case to which this act was applied it failed. The case was Gahagan's, for a piracy of a bust. In this the head was an exact copy, but some drapery was thrown round it. The pirated bust therefore would be a copy with addition, the making of which was prohibited; but the making could not be proved. The selling prohibition as to the article drops the "addition and subtraction," and the pirate had not sold a bare copy. Lord Ellenborough remarked, that the act, though forbidding the sale of, did not interfere with the making a facsimile, and said that the artists had better apply again to the legislature, but employ professional assistance to draw the bill. The clause too respecting the putting on the name is imperfectly worded, so that we must infer that the act was the production of an artist who handled his pen less dexterously than his chisel, and varying the proverb a little—"He who is his own lawmaker has a fool for his constituent." The act seems to have blunderingly copied from the print acts as to addition, variation, &c. The proviso excepts the purchaser, not of the model, &c., as in the engraving acts, but of the right in such model.

In proceeding to the present century, we will first complete our observations on sculpture. In 1814, sixteen years after the former act, the second and last was carried. It

was to "amend and render effectual" the last act, and to give further encouragement to such arts. The subject of the copyright is diffusely stated.

1. { Sculpture, model, copy, cast; } { Human figure or figures, or part or parts of such with drapery or without, bust or busts. } { Animal or animals; or part or parts, or with human figure or without. } { Any matter of invention. }
or in alto or bassorelievo.

2. { A cast from nature. } { Human figure, part or parts. } { Animal, part or parts. } { Or any such subject. }

with much verbose repetition. The breach is to consist in making or selling a pirated copy or cast, produced by moulding, copying or imitating in any way. The last clause, which adds a contingent right of fourteen years more to the author, if living, is modelled on a similar grant in the act of Anne, but with the illiberal exclusion from such benefit of the originator, who has sold or parted with the right, reducing the small modicum of addition which supports the words of the title "FURTHER encouragement" of arts. It is not stated that this amended act has ever been judicially applied; but it has not certainly been esteemed satisfactory by the artists, who complained of it to the Commons' committee. The only approach to a sculpture case of late years was a complaint of a theft of the models of Madame Vestris's foot from a rival Italian figure-maker. It went to a police court, and was supposed to have been manufactured for advertisement's sake.

During the early part of this century almost all the arts continued steadily in progress; the annual number of patents reached in 1801 the number of 100, and in the manufacturing arts the facility of production was always on the increase. New styles and new printing and engraving machinery came into use; and in 1814 the returns showed an annual produce of 5,000,000 pieces of calico. Alderman Boydell, the most famous of printsellers, the only man whose literary or artistic production ever made him Lord Mayor, died about this time. In 1804 he obtained the sanction of parliament to a lottery for the disposal of his property.

His plates for a single work, the Shakspere gallery, had cost 300,000*l.*, exclusive of large sums for painting the pictures. At the time when he commenced business, the engraving trade of England was an import one. It became one of exportation to a great amount. His catalogue of prints on sale at one time enumerated 4400, one half of which were English. And the importance of the art is exhibited in its employment of artists of the highest rank to execute pictures for engraving, or paying large sums for the privilege of copying them. Sir T. Lawrence had an agreement to receive 3000*l.* a year from one house for an exclusive right of engraving his works, while Wilkie received 1200*l.* for the right to engrave his Chelsea Pensioners, being just the amount received for the picture itself. The copyright of engravings was extended by 6 Will. IV. to Ireland. In 1830 the first and only case in equity under the old designs acts occurred, viz. Sheriff and Coates, in which Sugden and Wetherell were among the counsel. From a technical difficulty the case failed before the Vice-Chancellor; the Chancellor (Lyndhurst), however, granted an injunction, recognizing the equitable right, in addition to the penalties given by statute; but the question of originality could not be conveniently tried. The only legal case that occurred during the existence of the statute was that of MacMurdo before Lord Kenyon.

In 1836 a committee was appointed to inquire into the best means of promoting arts and manufactures, and their report contains a very valuable and interesting body of evidence from various classes of persons, all more or less qualified to throw light upon the subject. The report exhibits the development of the different branches of art at home and abroad, various points connected with their history, and the intimate connection that subsists between all these branches from the most exalted to the humblest; it investigates the duties of a government in respect of them, first, the positive, including patronage, in those cases which are not within the range of the private buyer; and secondly,

education of the perceptive taste of the people by means of museums, and the creative taste of the designer by schools of design, &c.; thirdly, the negative functions, viz. the protection of the designer or inventor's right, its amount and the mode of its vindication. On this head they collected the most obvious grievances existing and proposals for their remedy; they affirmed the desirableness of some new legislation, but they made no special recommendations, on account of the "delicacy and difficulty" of the subject, and its minuteness of detail; they therefore merely left it with an urgent recommendation to the care of government. The first result of this was in 1839, Lord Sydenham being an active promoter of it, and was a very modest extension. It stated, that since the former designs acts (forty-five years had then elapsed) new fabrics had been invented. It was nearly similar to the preceding acts, and extended their operation to woven fabrics of wool, silk or hair (animal materials), and it extended the general protection to Ireland. In the same year a much more extensive measure was carried under similar auspices. It was intended to include the whole range of manufacturing ornament, any new or original design for ornamenting any article of manufacture, distinguishing patterns to be printed or woven, and shape, which was limited to external shape. The introduction of solid form might lead, it was thought, to confusion as to the subjects of the sculpture acts, which were therefore excluded. It may be noticed as a coincidence, that as engravings obtained copyright before the imitation of solid form, so in ornamental design patterns preceded ornamental shape. The articles were to be marked as heretofore, and the system of registration was now introduced. Probably our increased intercourse with France had rendered us less averse to take a lesson from our neighbours; direct piratical application, and also imitation, were forbidden. The term given was twelve months (four times the term of the old acts), except for shape in metal, which had three years. Lace, however, was ex-

cluded, and the subjects of the older acts, calico, &c., the calico printers, it seems, fearing the trouble and cost of registering their numerous productions.

It was not to be expected, however, that the new system, if good, should remain inoperative in the most active branch of textile manufacture. The duty on calicoes had been taken off in 1831; the returns for the preceding year showed a production of eight and a half million pieces. The removal of the duty had combined with mechanical improvement to increase the amount both for home and foreign consumption; and the progress of machinery at the same time (in twenty-five years the cost of preparing a pattern, printed or not, for prints was reduced to one-fifth and the time to one-fourth) afforded greater facility than ever for piracy, which was practised with all the energy of modern business competition. The subject came before parliament in 1840, and was vigorously debated in and out of the house, with the aid of petitions and counter-petitions, squibs, treatises and pamphlets. The opponents of the measure boasted a superiority in the amount of production, as to the mileage of their calico, and the number of their hands employed; its supporters claimed superiority in design, on which they said the future prospects of the trade must be built. The lace-workers, also, not included in the last act, were divided; the pillow-weavers, the inferior party in point of quantity, supported the bill; the employers of machinery opposed it. The bill in the House was principally under the conduct of Mr. Emerson Tennent. Lord Sydenham supported it; and at Sir Robert Peel's suggestion the conflicting opinions were referred to a committee, and both parties had ample opportunity of contending the point.

The opponents of the measure were willing to allow the owner a title to a start in the market, and the reputation acquired thereby, before the pirate could overtake them (which it would not require any act of parliament to give them). One of the witnesses admitted that piracy was injurious in "isolated cases;" the committee suggested

that he should mention those cases where it was not injurious, but he declined to supply any information on that head. A second thought the taking another man's property unjust, but then many of the patterns were too trivial to be worth protection. The owners of the patterns wanted a right to all the rest as well as the "isolated cases;" they preferred deciding for themselves as to the triviality of their patterns; they said piracy had paralysed their trade. The report of the committee is very copious, and it was followed by a little work by Mr. Tennent advocating the extension. This volume condenses, illustrates and arranges the most material parts of the report, and contains an express refutation, by means of materials collected on the continent during the recess, of the argument, that copyright would prove destructive to the export trade.

The bill became a law in 1842. It repeals all the previous designs acts, and enumerates the application of the design by printing, painting, &c. at much length, and the purpose, viz. pattern, shape, or configuration or ornament. It classes them in twelve divisions, some of them obtaining three years, some one year, and some nine months' protection; among the latter are the bulk of calico prints, the term of which is thus trebled. The novelty is explained as non-previous publication in the united kingdom or elsewhere; the mark to be appended to each article was made more convenient, and the name, which had been objected to, supplied by a cipher; the word proprietor was defined, to prevent any narrowing of the application of the act, and, coupled with this, a simple and convenient mode was introduced for transferring the ownership. Notwithstanding the liberal construction put on the word copy under the engraving acts, the act, like the last, provides against the piratical application, not only of the design, but of any fraudulent imitation of it; and instead of requiring proof of knowledge of the want of the owner's consent, a mode of giving due legal notice is set out. The penalties are to be adjudged by the usual inferior tribunals; the objections

to them were not overlooked by the framers of the act, but it was not deemed necessary to enter on the difficulties and incur the responsibility of making any novel arrangement on this head. The procedure, however, was made obvious and easy, by providing forms of information and conviction, and the option of proceeding in the higher courts is retained. A provision was introduced to amend an erroneous registration, which, under the prior law, was fatal to the real owner's right. The enactment against the fraudulent use of the word registered, was perhaps suggested by an (abortive) attempt at a similar regulation as to patents. The time for proceedings was extended from six to twelve months; and, to meet the anticipations of vexatious litigation, the thirteenth clause was inserted at the third reading of the bill, giving costs to a successful defendant. The extension of the act to sellers as well as makers of a piratical article was much contested (some difficulty occurred in Sheriff's case as to the seller, probably as to proof of his knowledge); without this, however, the act would have been in all probability so easily evasible as to be worthless. To meet the objections to the cost and trouble of registering, the fees were expressly restricted in amount as to calico, paper-hangings and some other articles, and the number of copies altered from three to two.

The drawing of the act was much criticised in M'Crea's case; it has however been in operation to the present time, and is generally adopted and acquiesced in by the more important classes of manufacturers; the few cases of infringement have generally been sustained, and thus a check given to the dishonest and unscrupulous portion of the members of a trade. Shortly afterwards, the calico printers who supported the measure presented Mr. Tennent with 3000 ounces of plate, in acknowledgment of his services in obtaining the law; and at the dinner, Mr. Tennent said, to show how the more extended period made the right worth claiming, that during three years previous to the bill, the number of registered designs of every class were but 1423, out of which fifty were for wool, shawls, silk and

paper, while in rather less than half a year after the act, the numbers were of all classes 2934; of shawls, &c. 425; and of cotton articles 2356.

On one point difficulty arose, viz. the incessant attempts on the part of inventors of utilities to squeeze in along with their more fortunate brethren the inventors of ornament. Patents were, from their expense, in a multitude of cases quite out of the question. A registration, though evidently an unsound title, might give, in the eyes of the public, a certain protection, and if it failed, there was but three pounds lost. The abuse had begun under the old act; of three police cases under it, one at least was a matter of utility. The registrar refused to register some designs, and issued warnings to inventors; but the evil continued, and next year the practice was only stopped by providing a substitute. The want of such a copyright was obvious, and equally so that a revenue was to be made of it. The new act, 1843, was the first recognition of copyright in useful form; it was modelled on its predecessor; the other is in many official documents called the ornamental act, this the non-ornamental. The opportunity was taken of revising the machinery of registration, &c. in both. Some differences occur in the marking and in the mode of registration; labels and wrappers are excluded and ornamentals; there is no other description or limitation of the subjects of the act except that of immoral designs. (As this last proviso is not in the 2nd section of the act, *ergo*, logically, an immoral design is copyright but not registrable.) A subsequent stamp act added £5 to the cost of registration.

The act has on the whole worked well, and no doubt will, by its practical operation, supply its own best interpretation. Many of the police cases however have failed, especially with reference to the fastidiousness about mechanical action, &c. exhibited also by the repeated additions on this head to the registrar's instructions. Most of the patent agents have taken part against either the whole system, or a large portion of its application, and the collision with

unspecified patents has been dwelt upon. A few pamphlets and articles in periodicals on these questions have been published, but no general treatise on the subject, with the exception of a little work by Mr. Brace (1842), who took an active part in carrying the ornamental act, and whose book is an exposition of the act, and an exultation at its success. The subjects registered under this class, though less numerous than might have been anticipated (the annual number falling much short of that of patents), are sufficiently various. All sorts of industrials make their appearance in the list: ploughs and beehives for the farmer; archimedean minnows for the sportsman; stoves and chimneys innumerable for the builder; tools, omnibusses and wheels, shirts, coats and buttons, umbrellas and umbrella dryers, artificial teeth and artificial leeches, lamps and coffee-pots, stationery and mathematical instruments.

The continued complaints of patentees, and the importance of the property affected (the annual number of patents is about 500), have led to some amendment already, and it is probable that more will be effected both in them and registration, and in defining their respective provinces. And it is nnderstood that it is in contemplation at the Registration Office, by a new bill during the present session, to render the term of a registration extensible, at the will of the owner, to a period of ten years, subject, as in the analogous case of a patent, to the renewal of the expense, and substituting the control and discretion of the registrar for that of the privy council in patents. With reference to prints, it may be mentioned that, in 1842, when the last literary act was under discussion, it was proposed to include prints, giving them a term of sixty years. The right was to be to the first engraver, with consent of the designer or proprietor of the picture, supposing him not to be the engraver or employer of the engraver. The proprietor was to have no power to give a second license; and when there was no proprietor, as in case of a national gallery, &c. the right would be simply in the first engraver. At Sir Robert Peel's recommendation, however, engravings were omitted, partly

to make the remainder of the bill more manageable, and partly with a view to some comprehensive measure on art in general. With reference to the commercial value of this branch of copyright, a recent work estimated the number of printsellers in London at twenty, and their average amount of business at £16,000. Some questions of interest, relating not indeed to copyright, but to the anterior right to allow the creation of it, have occurred in the recent case of Prince Albert, the first case it seems in fine art analogous to those on MSS. in book property. The last law on the subject is the international act of 1844, which assimilates prints and sculpture to literary property, providing a registration for them, and requiring the deposit of a copy of a print. The registration fee is one shilling in each and every case, which stands in strong contrast to the heavy and capricious fees of the designs acts. It is however as yet practically inoperative.

Number of Ornamental Designs registered.*

Class.	½ of 1839.	1840.	1841.	1842. ⅔ of	1842. ⅓ of	1843.	1844.	1845.	⅓ of 1846.	Total Classes.	
1. Metal	54	149	228	231	84	215	198	175	39	1373	London, Birmingham, Sheffield.
2. Wood	2	11	14	8	16	37	21	10	3	122	London.
3. Glass	4	12	6	4	10	7	4	23	7	77	London.
4. Pottery	1	3	11	8	8	30	67	48	13	189	Staffordshire.
5. Paper Hangings.....	78	105	52	35	154	241	341	502	71	1519	London.
6. Carpets, Floorcloths..	1	27	114	102	98	230	348	339	132	1441	London, Worcester, &c.
7. Shawls (printed)	..	..	..	..	1	113	240	167	65	586	Kent.
8. Shawls (not printed) .	..	..	..	..	..	93	115	128	40	382	
9. Yarns, &c. (printed) .	..	..	..	..	1	52	13	..	..	65	
10. Fabrics (printed)	..	..	..	..	1488	7815	8360	6351	1670	25864	London, Manchester, 11500 about, Glasgow 7000, Kent.
11. Furniture	..	..	..	..	20	83	84	83	39	309	Manchester.
12. Fabrics (not printed) .	12	29	34	7	60	649	467	499	128	1885	London, Manchester, Glasgow.
13. Lace, and all others..	2	16	36	25	17	503	377	104	32	1112	Notts, ½; London, ¼.
Total....	154	354	495	428	1953	10118	10625	8609	2239	34975	Sum of Totals.

Non-ornamental.

1843.	1844.	1845.	1846.	1847.	1848.
98	241	276	291	401	410

* From a Return moved for in the House of Commons in 1846.

SECTION III.

GENERAL PRINCIPLES OF THE SUBJECT.

First, as to the principal grounds on which property in form may be, is, or ought to be based, and in accordance with which it should be extended,—whether recognized already by legal or judicial authority, or deduced from the rules which regulate the other kinds of property. Caution, however, is obviously required in doing this, and a careful regard to the peculiarity of a property "which," says Mr. Thomson, "from its immateriality, can be stolen through a window without cutting out a pane of glass; which can be carried off by the eye without being found on the person." On account of these peculiarities, those subjects of legal right which most nearly resemble it render the most serviceable analogies, namely, patents for inventions, and the other species of copyright, as literature, music, the drama, &c. Copyright and invention,—an epic and an orrery,—said Justice Yates, stand on the same footing; the mode of acquisition, and therefore the *jus fruendi*, is the same. Mr. Harrison, said the judge, spent quite as much time and labour on his timekeepers as Mr. Thomson in writing his Seasons, and the value of the former is quite equal to the latter. And his lordship probably meant somewhat more than he said.

As to the existence of the right, it might perhaps be deemed sufficient to conclude the question summarily, as did Lord Lyttleton, "I cannot enter into delusive, refined, metaphysical arguments about tangibility or materiality, or the corporeal substance of literary property; it is sufficient for me that such a property exists." And if further argument were wanting, it might be deduced from the evident consciousness of a sense of reproach attending its infringement. Some of the sturdiest advocates against copyright in designs before the House of Commons disclaimed, on

their own parts, the practice of that right of piracy which they maintained in theory. Mr. Tennent, after pointing out the inconsistency, says, "one small glimmering of right and justice shines through this; without moral firmness enough to avoid dishonesty, they have moral feeling enough to be ashamed of it." Still even at the present day copyright has its opponents. Lord Camden's arguments were revived the other day, and that by a periodical devoted to the fine arts, which rejoiced that though engravings were protected, pictures (as in Martin's case) were freely open for the public to use or abuse. The author indeed thought that it was perhaps a little unjust, but then he comforted the artist with the reward of "imperishable glory,"* and quoted Fuseli, "No work of genius was ever produced but for its own sake."† But Fuseli found the delights of painting compatible with the receipt of money for the picture, and it does not appear that Lord Camden accepted the glory of legal reputation in full satisfaction of his rights of salary. Had the case been fairly put to the public, they would never have grudged the artist his small premium. Suppose the few shillings which the author's right adds to the cost of a volume were marked on the cover, would it not be paid, and paid willingly?

The right arises (as all property does in the first instance) by labour. There is labour in every work of art; a drawing is said to be copied from nature, but there are no lines at all in nature; the outline is the abstract creation of the artist. Some of the acts speak of securing to the artist the fruits of his labour, genius, industry, pains, &c.; and Lord Hardwick said that a copyright act was not a monopoly, and should be construed liberally. In a question between the author and his readers, the one and the many, the old rule might well be applied, of leaning to the weaker side.

* Goldsmith on one occasion, on receiving the "glory" of some honorary appointment, said it was like giving ruffles to a man who wanted a shirt.

† Compare Reynolds's view of the case, "Let there be buyers, there will soon be sellers."

The arguments on the other side, however, refer principally not to morality but policy; a few of them may be noticed, though if the right be established it is difficult not to decide *à priori*, that its infringement cannot, at least in the long run, be beneficial to society. Justice, said Wordsworth, is capable of working out its own expediency. The first point is as to future advancement; there is a fear of "putting manacles on science." Thus, Sayre and Moore's case speaks of retarding the progress of art; and most of the preambles to the acts express the twofold object of securing the inventor, and encouraging or advancing art,—more or less expressly avowing the first as being a means of attaining the second.

Now there is really no fear whatever of the world of invention being too narrow for its cultivators. Any subject, natural or artificial, may be drawn and modelled in 10,000 different ways: the artist executes one and claims it, he leaves 9999 to those who come after him. In a print case the judge allowed that there could be no claim to the plants drawn in a herbal, but the claim was to the plants *modo et forma* as in that particular book, the flower and flower-cup, seed-vessel and seed, in that one arrangement. And in another case, "the first engraver does not claim a monopoly of the picture; he says, take the trouble of going to the picture yourself, but do not avail yourself of my labour, who have made a drawing of it."

As to the increase in the cost of production, it must be recollected that in many cases it is the design alone that creates the manufacture. If dress were a mere covering, a single blanket would last a lifetime. This influence of design is recognized in the original French law as the main source of the prosperity of the silk manufacture, and was urged by the Arts' Committee in 1836, as well as the hopelessness of expecting manufacturers to employ men of talent to produce what is instantly open to general depredation. In France, at that time under the protection of copyright, the number of designs for an equal quantity of produce was four times that of our own, and this variety

and superiority of taste alone enabled them to maintain their place in the market; while, on the other hand, Mr. Babbage states, that the want of copyright has, by discouraging originality, ruined the Berlin manufacture of iron ornaments. Copyright, however, is entitled to rely on its services to the purchaser, as well as the producer, in claiming the encouragement of law. It diffuses the refining influences of taste and intellectual gratification among all classes.

> " Be mine to bless the more mechanic skill,
> That stamps, renews, and multiplies at will,
> And cheaply circulates through distant climes
> The fairest relics of the purest times;
> Thy gallery, Florence, gilds my humble walls,
> And my low roof the Vatican recalls."

Copyright is in some arts unnecessary. Thus Japanning so much lies in the manual and individual dexterity that piracy is impracticable, and this indeed applies to most kinds of painting; so in engraving, the possession of the plate may sometimes almost secure the copyright, depending on the degree of facility and rapidity with which it can be reproduced by mechanical means. And the pirate again may to a certain degree be anticipated, since while the design exists only on a single plate, it may be kept secret till the whole number of copies is prepared within the house or factory, and ready to pour a flood into and fill the market. This is shown in the gradually increasing employment of indoor designers previous to the recent acts, and the lace manufacturers, who give out patterns to the cotters for execution, made much complaint of the piracy that took place before a single piece could be brought to market. In a feeble degree this principle even establishes a copyright in America; an English author can, until he publishes here, obtain a trifle for his proof sheets.

But wherever piracy is advantageous, there copyright ought to step forward, and the simpler and more uniform the rights and means of defending them it affords, the

better. All divisions of the subject into useful and ornamental,—into matters of importance and trivialities (as the exclusion of labels in the last designs act), lead to trouble and evasion. In the case of Sheriff and Coates the trifling nature of the patterns was urged against the right; but the chancellor (Lyndhurst) rejected the argument *in toto;* the design commercially was valuable. There is no measure of the amount of labour; the work of a lifetime may be concentrated into a page of mathematical symbols. The distinction in the old acts between casts or engravngs from natural or artificial objects only led to vexations and difficulties; so have the questions that have arisen as to works of mental industry or original invention. In patent law it was laid down long ago that no distinction lay between the inventions of the man of genius, the plodder, and the accidental finder,—that luck, labour and inspiration give an equal right. The design to be looked for is in the artist's work, not in the subject. Judge Best said, in a case in which the originality of a mechanical drawing reduced from another, as to the plea that plaintiff had not *designed* and invented the print, but only reduced it, "reduction requires labour and some skill to keep the proportions. This the defendant had the advantage of, and the making and engraving requires all the invention and design expected from an engraver. An engraver is always a copyist; but though a copyist, he produces resemblance by means very different from those employed by the painter or draftsman,—he copies by means requiring great skill and talent,—he produces effects by means of light and shade, or, as the terms of his art express it, the *chiaroscuro*, the due degrees of light and shade are produced by different lines and dots, and on his choice of these depends the success of the plate." His lordship concludes by expressing "the satisfaction he feels in coming to that decision upon a branch of art eminently useful, and which in no slight degree *emollit mores nec sinit esse feros*, and contributes to a circulation of the mechanical knowledge so necessary to our

manufactures, and so useful to the best interests of the country." So in a recent design case, the title of the plaintiff to a modelled candlestick was disputed, on the ground that it was taken from a published engraving. But the magistrate saw a wide scope for artistic skill in translating such a sketch into practical form, observing that were the argument good, copyright would be worthless. With the question of the originality of an engraving, we may compare that of the sculptor, who not only modifies the form to idealize it, but may exhibit much dexterity in merely reducing the scale, and still more in converting actual forms as existing in nature into relief or intaglio. In Blackwell's case even the less extensive language of the old act was freely construed by Lord Hardwicke, and the point of originality viewed as in the design, not the subject. It was "not confined to invention, as fabulous or allegorical representation, nor history, as a battle; but the designing or engraving anything already in nature (*i. e.* in existence), even a print of a building, house or garden, or that great design of Mr. Pine, of the city of London;" and in Sayre and Moore the consolidation of various charts, correcting them thoroughly, was held an original work, not a piracy.

Of course a work of art, whether as copyright or as common property, must neither injure an individual nor offend the public. Immorality, slander or sedition cannot become property. Thus in Fores's case, an order for all the caricatures ever published was not an enforceable contract as to any that were "libellous or obscene," though valid as to those of "general satire and ridicule." In Dubost's case the defendant had cut to pieces a libellous picture, called "Beauty and the Beast," and damages five pounds were given for the value of the canvass only. Of course the wrongful nature of the work must be shown; it will not be presumed. Some of the book cases may also be compared. It seems open to question whether national encouragement of the beautiful ought not to bear out the suppression of the ugly; whether, for instance, a man should be

allowed to daub his house red or blue, to the annoyance of the optic nerves of the public.

The next point is as to the mode of the creation of the right; and firstly, as to the person. This was originally the author only; but in more recent acts the owner is made equally capable. Lord Hardwicke said in Jeffrey's case, that the proprietor was not included, because the intent of the act was to reward genius and encourage art, like the law of inventions, that it was made for the artist. One would have thought the best way to do this, had been to render genius every assistance in bringing its produce to market. It would hardly increase the man's wages, to hamper the right of the master to the work. Secondly, as to the cost. This is in England very capricious; but on the whole, as regards property IN FORM, there is little to complain of. The cost of a patent is enormous. That of books was burdensome; eleven copies were at one time required, which, when costly engravings were part of the work, fell heavily on the valuable books, however lightly on those of more numerous copies. A work by Nash on the Brighton pavilion was published without any text, to avoid the cost of the eleven copies, which would, it is said, have amounted to 220 guineas. The number is now reduced to five, which is more than is required in America or the continent. Whether such a mode of acquiring a national library be equitable is doubtful. In America a museum of models is acquired in the same way. In some kinds of copyright no expense is incurred, as prints and sculpture. In others, as manufactures, fees of various amount are payable, in addition to the deposit of copies or drawings. Most of them were fixed by the law with reference to the probable cost of the design, its duration, and especially to the maximum amount that manufacturers would pay, or were supposed likely to pay, for the protection. Thus the calico printers, who were influential promoters of the bill, insisted upon the reduction of their fee to one shilling; while a design of utility, perhaps to avoid

making patentees over-envious, was made up by the help of a stamp to ten pounds, which compared with a patent is moderation itself, yet it seems onerous when we see the sculptor and engraver protected for a ten times longer term for nothing. The extreme inconsistency of all this was well shown by Mr. Hawkins. "I have a lump of clay," said he, "and if I make it into a head, it is mine at once; but if I make a teapot of it (there was no utility act then) I must pay 400 pounds for the right." One disadvantage of the variety of cost and duration, &c. is, that it leads to all sorts of shifts to get an invention into a class it does not really belong, as when a subject for patent right is registered (see the end of this section), or when an article really valuable for use is squeezed into a registration of ornamental form, (and see Lowndes v. Browne). The French were our examples in establishing any design rights at all; it would be well if we adopted their simple sensible arrangements for securing it. All kinds of design there are treated alike; all pay one price, and that price is not an arbitrary sum, but an annual tax. Two grounds only would justify our unequal taxation, variation in the value of the commodity (protection) sold, or variation in the cost of affording it. Now as to the value of the protection, how is that to be estimated? One pattern brings in hundreds, another is a dead loss; one is designed by a royal academician, another by an apprentice. A pattern in metal may sell to scores of purchasers, and an equally meritorious design in glass to thousands. Why should the first pay thrice what the second does? Objections of this kind will at once occur to those conversant with the various branches of art. Why not one uniform charge, and that one charge a minimum? The service rendered is precisely similar in all cases; it consists in simply receiving, recording and preserving the claim of the owner. No guarantee is given, no assistance in maintaining his right. The legislature professes great zeal for the encouragement of design. To be consistent, it ought to have maintained a registration machinery at its

own expense. The money would have been spent for a similar object, and with more efficiency than in establishing schools of design; but at all events nothing more ought to have been required than what would maintain the office, and a fee of one shilling on each design would have done this.

It may be noticed that the design is capable of registration as soon as it is delineated on paper. But an engraving or sculpture is not copyright till committed to the mechanical instrument of reproduction, the mould or plate.

In the exercise of the right, certain forms analogous to registration are required. Designs require a mark attached to each impression or copy; sculpture and engravings, a name and date. The mark of course is only practicable when there is a something ulterior to refer to, viz. the registration. The principal object is to prevent innocent infringement by recording the name of the proprietor, and to inform the public of the right being thrown open to them, by recording the date *ad quem* and *a quo*. Some of the judges said that the name attached to the engraving would enable any person who desired it to know where to apply for a license, &c., or for an edition, &c. It does not seem very important to provide for this, or difficulty might occur, as "John Smith" would leave the owner somewhat uncertain. In designs, the mark would, by inquiry at the office, supply the name and address not only of the original but of the existing proprietor. The object of not absolutely printing the name and date upon the article was not that of hiding or in any degree suppressing the real extent of the time of the right, but partly to employ a less disfiguring form and size of label, and especially to, on the part of the seller or middle-man, conceal from the buyer the name of the maker and date of the article. That is, in effect, to facilitate misrepresentation as to date, and deprive the public of the best possible security for the quality of the goods, viz. the pledging the name of the producer. Thus in printing some mathematical tables for Laplace, the mode

relied on to obtain accuracy was to attach to each page the name of the compositor. In some cases the label is only affixed to an end, and may be cut off; but if printed on porcelain, for instance, or cast in metal, it would be indestructible, though it might be hidden by its position. The same remark is applicable to any number of patterns registered to one person and of one date; by which means risk of mistake in marking the patterns was meant to be avoided; but it would seem that some distinction of number must be required when one pattern becomes the subject of a transfer or penal process. It is almost to be regretted that the legislature did not, by requiring the real name and date, discourage commercial deceit, as they availed themselves of registration to prevent the false use of the word registered, which, though not an injury to copyright, but to the public generally, is punishable under the design acts. It is worth notice, that in the very first case this part of the act was infringed. In France, this principle is carried so far, that an article must be marked, "*Sans garantie du gouvernement.*" In this country, our "Her Majesty's royal letters-patent" is not held responsible for the merit of the schemes they protect.

The certificate being given for a design, the existence of the registered copy is apparently unimportant. Were the specimens all burnt, as actually occurred in America, the copyright would be uninjured; and, in the case of engravings, the destruction of the plate was said to have no effect on the right; nor is it necessary that a single copy be in existence. The copyright would then much resemble an unwritten copyright in a song, play or lecture.

We next come to the defensive exercise of the right, the remedies, or secondary rights arising from the breach of the primary right, their nature and modes. And firstly. The decision of what shall constitute a breach of the right has always been somewhat difficult to define, and ingenuity will always be applied to evade the line drawn. In an engraving case, the Vice-Chancellor illustrated the

question by laying it down that "any one may copy a book if he writes notes upon it, so as to present it to the public in connexion with his own," which seems a convenient plan for a pirate to adopt, especially if he printed the notes at the bottom ready to be cut off by the book-binder, which artifice was actually employed in one "Parson's Bible" to evade the copyright. As to estimating the injury by quantity, as when in Roworth's case the pages were counted, we may remember Lieber's observation, that the thief only takes the wheat, not the straw, which is the bulk of the crop. Literary infringements are sometimes treated of under the heads of, 1st, Facsimile; 2nd, Copying a part; 3rd, Imitation, Variation, Addition or Subtraction; 4th, Abridgment; but it might not be easy to arrange pirated forms into these points of division; and the law usually speaks of copying the whole or part, adding, subtracting, or varying. The test would probably be the similarity of purpose and result. Mr. Martin stated to the committee that his mezzotint engraving was successfully pirated by a lithograph. A French case speaks of "*une imitation assez parfaite pour établir une concurrence commerciale.*" The questions are, whether it serves as a substitute, supplies the place of the original; thus the design act speaks of peculiar classes, implying that the application of a form taken from a carpet to a paper, from the floor to the wall, horizontal to vertical, is no breach, no commercial injury; still less would the sculpturing a design after a print, or *vice versâ*. See an opinion of Sir F. Thesiger in the Journal of Design, that a statuette modelled from a print is not a copy under the engraving acts, which also accord with a French case, in which an ivory umbrella handle had been carved after a print. This subject will be illustrated by observing what degree of originality suffices to constitute a subject for a new copyright, and reciprocally what is not a breach of another right is a fit subject itself. It seems, too, that a man is not prohibited from importing a book for private use, though he is from lending it; in pa-

tents, however, the use of a process in private without license is of more commercial importance, and is an offence. But, secondly, the pirated copy may vulgarise and depreciate the value of the other copies, or injure the artist's reputation. And again, the exhibition of copies even differing too considerably to infringe the copyright may seriously injure the owner, not of the copyright, but of the original.

The remedies for these injuries are confiscation of the pirated copies, which in the case of prints are to be "damasked" and made waste paper of; confiscation of the moulds or plates, pattern cards, &c., the former referring to past acts, the latter to the future, penalties of various amounts, and damages; while equity grants precaution and information in aid of the future, and enforces past legal proceedings. The Committee of the House of Commons viewed the attainment of cheap and reliable remedies as the main difficulty of the subject. A witness is asked, "Why, when you had copied their patterns and they had this law (the old one) to protect them, did they not proceed against you?" Answer, "They thought I would fight them, and that was all." An injunction in Chancery, if but slightly opposed, is said to cost £60 or £70; a lawsuit more. The power of a long purse, however, though always formidable, is restrained as the law becomes ascertained and its decisions published. Thus in France, in a case in which the mayor of Rouen was heavily fined (2000fr. and forfeitures) for using the patterns of a Paris firm, the conviction, placarded in the manufacturing towns, put a stop to piracy for some years.

It may be remarked as to variation, that the act speaks of varying, adding and subtracting, as among the modes of copying, and this is supported by various cases. In West's case, Lord Chief Justice Abbott's direction to the jury to consider whether the defendant's print was substantially a copy, was held good. Judge Holroyd said a collusive variation was a copy. Judge Bayley said, "in common parlance, a copy is when there exists but a small variation

from the original." In a recent case, Moore v. Clark, the judge distinguished a substantial copy of the main design from a copying in part, which was apparently not provided for by the engraving acts. In this case a print of Beeswing, a winning horse for a former year, had been served up to the public as Coronation, another horse; the horse was a facsimile, save that his head turned the other way, but the jockey was original, and the back ground new. The judge seemed to think that only an artist would detect the imitation, and that no injury was sustained, for the piracy could not affect the sale of the original. It did not seem clear whether nominal damages could be obtained, if the piracy had been clearly made out. Roworth's case explains a copy as such a similitude and conformity between them, that the person who executed one must have used the other for a model. There the attitudes (of fencers) were the same, the dresses, &c. altered; the question was, if these attitudes were inevitably used in exhibiting that style of fencing. This is one of the tests, that of the mode of production; the other test is the result produced, "that which comes so near the original, as to give every person seeing it the idea created by the original." Again, in Roworth's case, there would be no breach, if it were supposable that the similitude arose from accident or necessity of the nature of the subject, or by the artist having sketched the design merely by reading the letterpress. The necessity for so construing the word copy as to allow some variation was pointed out by Judge Bayley; "distinction would be endless, if it were held to be an exact copy, because if there were the slightest dissimilarity, the statute would be evaded."

Under the design act, in Bailey v. Harrison, a print had been copied on a handkerchief. The subject was a group of cricketers, and in the piracy one or two of them were made lefthanded, and the ball was in a different place; the purpose seems hardly similar; a handkerchief is an imperfect substitute for a print. Broadhead and Wolstenholm related to a candlestick; the drawing in the Journal of De-

signs for June, 1849, well illustrates the range of variation that may occur. See also a query about a tray in No. I. of the same work. The same remark applies to Gibbs and Sparway as to a granite paper, an imitation as to general effect on the eye, both papers representing granite blocked in relief, with a white outline, but the size and angle of the blocks were different. The designer had undertaken to produce something which would work the same, but be different in fact. The case was sustained. Kipling and Johnson related to a carpet. A scroll was a little extended into the border, a flower was introduced instead of a square figure, a line changed into a diamond, &c. In Hughes and Ford, a ribbon formed into a "Japonica" leaf, and placed between ruche, to form a bonnet trimming, was copied as to the leaf, but combined with a different border. Both these cases succeeded. In the case under the old act, Sheriff's, the patterns consisted of minute waving or dotted lines with a leaf on a uniform ground. The design was simple, and the piracy evident. The similarity of purpose failed in Martin's case. The exhibition of the diorama of Belshazzar's Feast was no publication such as the acts contemplated, and the dioramic effect, the size, the colour, made it no copy of the print. In Murray v. Heath an engraver retained certain impressions from a plate belonging to plaintiff, (a trade custom for this was stated, but not established), which subsequently came into the market (under bankruptcy), Held no piracy, the engraving acts requiring the copying the plate, the illegal use of the original plate being only a breach of contract.

A cheap and satisfactory tribunal is still a desideratum. Though equity requires only a brief possession, and has respect to the duration of the right, there was much in the argument in "Sheriff's case," that a patent of ninety days was a singular and inconvenient subject for the cumbrous and dilatory proceedings of Chancery; ere the question was determined the right would have expired, and the court be left to grapple with a shadow. The inferior courts again often show an aversion to the decision of design cases. In

one of these the aldermen thought the case not proved, but being asked in what respect? they "declined going further into the question." Another case was said by Mr. Jardine to be much too important to be disposed of in such a summary way, and quite foreign to the general business of police courts. The aldermen are often found spending several hours over a design case, and sometimes disagreeing. The subject is perhaps somewhat more suitable to the county courts, and if equitable functions be hereafter extended to them, they may be an economic substitute for the Court of Chancery. The French possess a highly efficient machine in the "conseil de prudhommes," composed of masters and workmen, and having jurisdiction in all matters of a trading or commercial nature; its jurisdiction in piracy of trademarks, for instance, is obviously advantageous. The promptitude, economy, and accessibility of this tribunal, was admitted by the committee on the arts, (in the year 1835, out of 3835 cases, there were only 352 appeals), and if it were too extensive a novelty to be transplanted here, some body of a similar constitution might advantageously assist the regular court, whether superior or inferior, acting as a kind of assessor, like the Trinity Masters in points of technical navigation, or matters of detail might be referred to them, as accounts to a Master in Chancery. As an instance of the difficulty of the discussion of technical matters by laymen, it is mentioned that Lord Lyndhurst, then Mr. Copley, spent ten days in making himself familiar with the details of lace manufactory, previously to a patent case on that subject.

When the article is for general purposes and sale, the judge in equity will inspect an article and decide on its identity; but Lord Lyndhurst, on one occasion, was, "from absence of means of sifting and cross-examining witnesses," "wholly incompetent to pronounce on the originality" of a design for calico, and though this difficulty no longer exists in a court of law, yet this latter is an inconvenient court for matters of technical detail. An advantage of a local, and still more of a commercial tribunal, is, that the

practical value of the matter in dispute is more felt; thus, when one alderman had objected to the waste of time on so trivial a subject, his colleague replied, that in his ward there were many such registrations, and that they were highly profitable. It would of course be necessary to provide that the magistrate, if an unpaid functionary, have no sinister interest to bias him. The design act makes an exception on this head, and not without reason, if we consider that at Manchester three magistrates, opponents of the bill before the committee, were, by their own admission, copiers. Any degree of difficulty attending the administration of the law suggests the advisability of making decisions on the subject matter of record. They would, even if sometimes erroneous, always be worth comparison in any future cases, and greatly economise judicial labour. It would be easy to require a minute of the proceedings in any case to be transmitted to the registering office, and allow a complainant to cite any previous cases in argument before the magistrate. By some such plan as this an excellent foundation would be laid for future legislation, a business which, in copyright, has not always been so conducted as to give satisfaction. The Jurist protests that of all the bungling pieces of legislation, the copyright acts are the worst. The last editor of Jarman hints that a literary act might have been written in good grammar. When a committee reported on the defects of our legislative expression, the sculpture act was particularly referred to, and Lord Ellenborough's account of it, that it seemed framed to defeat its own object.

The period at which the right terminates is various. Printed patterns have usually nine months; woven fabrics from one to three years. Other articles of ornament, as wood, glass, metal, &c., as well as the designs for utility, have three years. Prints have twenty-eight years. Sculpture fourteen, with a contingent fourteen, if the author survive the first. It may be doubted whether the perpetuity of copyright do not exist in these matters, as the fatal words "no longer" are not in the engraving and

other acts. But it is not likely that any practical attempt will be made to claim it. In France all designs for manufacture are claimable at the will of the owner for one, two, or five years, or a perpetuity.

If any fixed term, three months, three years, &c., be appointed, it must be needlessly long for one design and unjustly short for another, and of coure the most deserving will suffer most. This topic has been amply discussed in literature. In patents the injustice was so glaring that various private acts were passed from time to time in favour of individuals, and subsequently the capability of prolongation was adopted as a principle, and committed to appropriate ministers. The tardier maturity and prolonged bearing of the crop in patterns of a superior value in the same art was particularly brought forward in the evidence on calico. Measuring the term by the life of the author, or even of his widow, is quite indefeasible; it is a relic of barbarism. The accidental value of a man's life cannot possibly affect the value of his works to society, nor the cost of the head-work spent upon them, except merely in one point of view, that the work of the veteran, the rich results of accumulated intellectual wealth, meet with the worst remuneration. A man knows that as his powers become worth more to society they are worth less to himself and his family; and the inventor or artist, in those pursuits which by mechanical reproduction increase the happiness of all, is alone deprived of that stimulus which in all other professions encourage the student to strive unceasingly for perfection. Assuming thirty-six as an average age of maximum intellectual production, the twenty-eight years of an engraver would, perhaps, nearly agree with a life interest, and the sculptor would, in the majority of cases, get his contingent fourteen years, and the right of the chisel would last as long as that of the graver. In manufacture design, the point of duration of life does not occur, the right going at once to the proprietor. Whatever hankering may have existed after the perpetuity of the ante-statutory right, it is satisfactory to

see that any alterations that have occurred in the latter acts relative to any kind of copyright have had the sign of plus prefixed; and the extensionists have hitherto had all the argument, much of the public sympathy, and a little of the success, and there is every prospect that this will hold good for the future also.

Questions of "conflict," as to the different classes of immaterial property, arise from the intrinsic merits of the case, or from the irregularity and interferences of different laws. Thus a song or a drama is at once intended for the stage and for the shop; a print may be dealt with as an engraving or an illustration of a book. The cost, duration, &c. of the kinds of copyright may determine the owner's choice. The only question of this sort of practical importance is the strife between patents and designs for utility, out of which almost all the difficulty and discussion relative to the design acts has arisen. As regards all the minor inventions, and therefore the majority of them, the patent, from its enormous and inflexible cost, afforded no protection at all. It is insisted on that the new act was expressly provided to remedy this, and to such inventions it has been widely applied; but the validity of the rights obtained is questioned, and we have little of an authoritative nature to guide us in deciding what proportion of the registered designs might have been or may be maintained. It may be convenient to review the opinions advanced on the subject, which will also indicate the nature of the question; and we will divide these into opinions of advocates or magistrates on particular cases, and opinions of writers on the general interpretation of the words of the act, "A design for any article of manufacture having reference to a purpose of utility." Fox and Evans related to an illuminated night clock, in which the position of a point of light upon a dial was regulated by a candle, which burnt gradually down; and this, in the defendant's invention, was effected by the action of a spring forcing itself upward as the candle wasted. The aldermen thought the purpose the same, and

fined the defendant. Price and Chambers was about an ironing stove. The plaintiff's stove heated irons at the front, sides, and top, and was made with handles so as to be moved to any fireplace. The other was of similar shape, but was to stand in the centre of a room, with a pipe of its own, and not to be attached to the fireplace. Decision: the use different, and case dismissed. Webb and Hughes, a kind of crimped lace, called ruche, and to be kept in round boxes, one length in each. In the plaintiff's tray or box the strips of lace were compactly packed in the parallel troughs made by the ridges of paper folded triangularly (see drawings in Mechanics' Magazine); the defendant economised space still more by slitting open the top edge of the ridge and putting one strip under as well as between each ridge. The aldermen came to no decision; they thought the invention not a shape but a "principle." Wollferston and Warner (drawn in Mechanics' Magazine), was an ingenious arrangement of parts for opening or closing simultaneously, by one turn of one handle, three vents at different parts of a pipe. The other cock gave an exactly similar result; the relative position and organization of the parts was the same, but the outlines varied a little. It was pressed successfully on the aldermen sitting that it was the same purpose, the same mechanical contrivance, but a change of shape. Case dismissed. The same defendants had the honour of appearing to a prosecution of Woolley, and were equally successful. In the gallery of the lamp (see Mechanics' Magazine) a thin metal conic disc approaches the top of the wick, by which the air is made to impinge on the flame, and this enables efficient combustion. It was not asserted to be new entirely, but new for camphine, and the lamp was expressly intended to burn this. Held, an application of mechanism, a new invention, and therefore not within the act. Kennedy and Coombs, the subject was an ink and light box; the merit of which was, that by an alteration in the hinge so as to throw the lid upwards, and by putting a spring bolt into the lid instead of

the front, the box might be opened without extracting it from the space in the desk into which it was dropped. The defendant did the same thing by a different arrangement of bolt and another construction of hinge; the shape of the box was old, and not professed to be claimed. Mr. Hardwick decided that it was a new shape, not the same in substance. Margetson and Wright went first before two aldermen; the design was the insertion of a brass or metal eyelet hole, which could not be torn, in a paper or other label of fragile material; through the eye the fastening string was to be passed. In support of the value of the invention it was said that one man had saved 150*l.* by its use attached to sacks where the unprotected label could not be trusted. The defendant objected to it as not within the act, as a principle, and put forward that the shape of his label was differently cut, and improved by doubling the pierced part. Decision for plaintiff. The case next came before Vice-Chancellor Knight Bruce, and was discussed at some length; the previous conviction was dwelt upon; and, on the other side, an opinion produced of the Attorney-General that it was not within the act. An account was ordered, and the point left to a court of law. It then went to the Queen's Bench, but the point, after all, was not settled, as the novelty was overthrown. In another case, Margetson and May, about a shirt collar, in which the breach was unquestionable, one of the aldermen objected to the trifling value of the thing, it was not worth registration; the object of the act was to reward great skill and ingenuity. His colleague defended it, mentioning that an equally trivial matter had, to his knowledge, produced a profit of 3000*l.* Evans and Harlow, though under the old act, bears on the utility question; a "lubricator" had been infringed, the elliptic shape being exchanged for a spherical one; the value was stated by the plaintiff to be in "details and mechanical arrangement" of the interior, and this remained equally in the piracy, with some small colourable additions. It was dismissed, as not being a design for a

shape, or print, or model, as the act required. Vine and Johnson, about the same time, was similar. The design was for a churn, a tin cylinder placed in water; the use of water in a churn was old, tin was old, cylinders were old: the case failed. Grassly's case was a plough, and succeeded. The point was started in some other cases, which went off on other grounds; the narrowest escape it had from a judicial interpretation was in Millingen and Pickle.

In the course of these cases various expositions of the act fell from the magistrates or parties employed professionally. That it meant shape as a lamp glass; that configuration applied to a tea tray or an urn, not a label; that it was rather application than design. Utility was the test; a new application of an old form. Mr. Bingham spoke of shape, of an original combination of lines, not a mechanical action. Among authors on the subject we may mention Mr. Spence, who professes to arrive at the meaning of the act by comparing it with its predecessor, the ornamental act. The introduction of a scale to the drawing and a description shows that effect in operation as distinguished from external effect is contemplated by the act, and provided for. But then he distinguishes it from the subject of a patent, viz., an invention or principle. It is form or shape only. The principle may exist in different shapes, but a registered matter must not be followed into any other shape, and he dwells on the case of the ink and light box as an illustration. He admits that any change of shape does in some degree change the action. And the introduction of verbal description in the registration implies some scope of variation. He sums up as subjects of registration, purpose obtained by means of shape, or a shape producing purpose. Other gentlemen engaged in patent matters hold similar doctrines. Mr. Carpmael says all that is registrable in a table lamp is some peculiarity in the form of the stem, the oil vessel, or the shade, and no new mode of supplying oil to the wick of each, the wick or new apparatus to supply air for combustion, nothing but the

simple contour or configuration of the lamp or part of it. He asserts that no patent is registrable, and no registrable capable of a patent. Mr. Webster says that a lamp of the same description in all its parts, acting much in the same manner to produce the same end, would yet be no infringement so long as there were no imitation of the outer configuration. But a patent hardly ever depends on shape. Suppose a patent for an improved means of raising the oil from the stem of a lamp, it would be equally infringed whether external figure or design retained or not, so long as means of raising oil preserved. Mr. Newton calls the whole act an abortion. And an article in the Jurist dwells on the necessity for guarding against confounding it with patent law. And in opposition to these gentlemen, who seem determined to keep the province of registration within as narrow bounds as possible, almost the only champion of the act is the Mechanics' Magazine, which, upon the first appearance of the act, welcomed it as " an act to make patents cheap." There were few inventions that were not within its confines and benefits. Chemicals, indeed, must be an exception; but the limitation in the old act of " external" form was removed. It was admitted that a new oscillating or condensing steam engine would not be a registrable, but a wheel or a propeller would; the writer leaving it ambiguous whether it were the nature of the invention that made the distinction, or only the relative value, importance or complication.

Now, in this matter, to give registration fair play, we must not submit too far to the dicta of patent men; they will not be very anxious to narrow the range of " principles of invention," or to extend that of inventions of forms and shapes. They look on themselves as licensed gamekeepers of the manor of useful art, and the registerers as so many poachers. Probably, if it were left to them, they would contract the limits of utility in form till nothing visible were left; while it must be admitted, on the other hand, that a large part of the mechanical public are quite willing that it

should absorb the patent right entirely. Either extreme is theoretically possible; the most complex patent may be called a new form. A steam engine is a combination of certain hollow vessels, as cylinders and tubes, and solid parts, rods, cranks, &c., in such a way as to get a purpose of utility, viz., the sustaining a body of water in one receptacle near ignited substances in another, catching the force of the vapour in a third, and condensing it in a fourth. With the minor details and arrangements we have nothing to do. The purpose of utility is absolutely dependent on form, shape, and configuration; for instance, the cylinder must be continuously connected with the boiler, or the steam will escape. The piston must be of uniform diameter, cylindric, not a cone, or it will not fill the stuffingbox, and will, moreover, be stronger at one part than another. For the mechanician insists that every part of a machine, however complex, must have a certain definite proportion. It must be just going to break at every point. If it be a hair's-breadth stronger at any part, material is wasted. How then could such a registration steam engine be infringed on? Common sense and justice require that no colourable alteration be permitted to evade it; for any the slightest deviation from the exact ideal form is injurious; besides, the act forbids the application of the form, or any part of it, to such purpose; and that, by addition, subtraction, or variation. You cannot have principle without special form, any more than you can have respiration without lungs. Then, as to the other extreme, principle is never absent; you might put all useful contrivances to the head of patents. A nail is an invention for fastening a board by the principle of friction, and provided with a means (called the head) of being placed in a position by percussive force. It is the mechanical property, the friction, that effects the primary object, and the impact force that supplies the second part of the utility. The shape of the head is of no consequence; any shape would do. The shape of the body of the nail is quite indefinite; it is usually square in section;

sometimes round; it might be triangular; the angle of resistance, which determines the taper of the nail, varies with the material of which it is made, and into which it is driven. This would never be capable of protection by an accurate drawing made to scale. To repeat the simile, lungs have no purpose of utility except through the principle and mechanical action of respiration. The subject is analogous to that of ornamental design, in which it has been abundantly established that identity of effect on the beholder is the test of copying, not identity of form. See the cases of West, Roworth, Blackwell, &c. Sometimes, indeed, the exact precision of form is the essence of the thing. A glazier's diamond abrades the glass perfectly at one particular angular position of the crystal and no other; but had M. Argand registered his improvement in lamps, ought he to have lost it by another man making the wick and burner in a hollow square? The effect would be the same; but a circle and a square tube are surely different enough. Again, in a skylight the pane of glass is sometimes cut into an angle where it overlaps the next, that the wet may trickle down to the point, and so keep to the centre of the panes. If the base of the pane were made an arc of a circle, it would do equally well. Now an angle and a curve are geometrically as dissimilar as possible; yet the last shape would be a mere variation of the first. How are the conflicting claims of form and principle to be adjusted? The first point to look to is the legal foundation of the right; and here it may be remarked that the instructions issued by the registrar on utility design comprise two classes of paragraphs. Where they fix the forms and manner of procedure, they are fully equivalent in value to the act itself. They are made under its authority, and might be printed as a schedule to it. But those notices with reference to the subjects capable of registration in point of form or principle, &c. are not law at all; they are argument, opinion or advice. By virtue of the act, the registrar decides between utility and ornament, and rejects labels and designs

of objectionable character. Beyond this he can only advise or give an opinion; and this opinion may be employed before a magistrate merely as the opinion of a witness might. Thus the instructions say: " As" the act applies to shape, &c. no design containing a claim, &c. will be registered; but the thing to be registered is, first, shape; this must be drawn, and with it purpose; this must be described; but there is nothing in the act to prevent the claim of a purpose or effect in the description, if the shape be defined by the drawing. The act expressly contemplates principle dependent on shape. The direction is, moreover, inconsistent with another part of the instructions, which denies that the registration is any guarantee for the nature, extent and comprehensiveness of the protection afforded by it. This is in all probability aimed at the same question. But if the act, through its minister, the registrar, made a selection, and exercised a judgment, there must, when the act had done this, arise a corresponding legal effect as to the thing selected or adjudged. This is probably the meaning of the passage in the instructions; but the sense is not clear. Putting the main words in natural order, it affirms that the registration is not a guarantee for the nature, &c. of the protection given by the act. (It certainly could not have authority to control the act under which it exists.) "Therefore" parties should read the act before they take the benefit of it (which is good advice, independent of the " therefore"), in order that they may be satisfied as to the nature, &c. (Reading an act, by the bye, is not always satisfactory either as to the meaning of the words or their operation.) It is curious that the instructions immediately after closing the doors too strictly fall into an error of throwing them open too widely. They say that with this (prior) exception all designs (all in italics) will be registered; so that the registrar relinquishes the power given him by the act of excluding ornamental designs, labels and libels. The rules, however, as the advice of the registrar, may be useful, and his opinion correct on the point in dispute; and although his

device of printing shape and configuration in great letters and mechanical action in italics does not alter the typography of the act of parliament, it may render assistance in its perusal.

Let us next look at the act itself. The first clause (preamble): "such designs hereinafter mentioned, not being of an ornamental character, as are not included therein," *i.e.* in the previous act; therefore any non-ornamental design included therein is not in this act. The sense might be amended by a transposition,—such designs as not being ornamental are not included therein. The best plan of all would have been to omit both qualifications, and stop at "mentioned." Sect. 2 gives the right to apply any new and original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape and configuration of such article, and for the whole or part, &c. Now the ornamental act includes designs applicable to patterns printed or painted, shape or configuration and ornament applied to ornamenting, &c. The reference to the purpose of utility, though not concise, is intelligible; it answers to the ornament of the former act. But the limitation is found far less manageable; several of the judges have been puzzled by it; but, as mentioned, they came to no decision. Was it aimed at the patent question? I think not. Let us put aside the commentaries, and keep to the act. The former act included patterns, ornaments and shape; therefore it was thought that there should be something corresponding to it in the new act, thus:

A.	B.	C. 1.	C. 2.
A new design	for ornamenting	Pattern, shape.	Ornaments.
A new design	Utility.	So far as for shape.	Whole or part.

Now A. B. run very well in pairs, but C. 1. is not complete. If the ornamental form were not the whole article, but only a part of it in a modified shape, as a wreath round a pedestal, that would be an "ornament;" but if the utility were a dependent form, the top of an umbrella, and not the umbrella itself, this would hardly be a design for the shape

of the umbrella. Hence the addition of the whole or part to match the latter part of C. 2. Other points are worth noting. By Sect. 8, first, there is to be attached to the drawings a description in writing, to render the same intelligible, and set forth such parts of the design as are not new. Second, the drawings are to be on a proper geometric scale, —(what is an improper geometric scale, and what other scale could be used?) A scale drawing is merely a correct drawing. A copy of a pattern must be correct; it might be traced mechanically, while the shape would be sketched by hand; truth of proportion is therefore required by demanding a scale; this therefore leaves the question where it was. The description is to make the drawing intelligible, and to point out the novelty. This latter point arises from registering parts of things. If a man drew a new spout, he must give the kettle also; and then he must tell the registrar that he lays no claim to the kettle. The rendering the drawing intelligible may refer to the purpose of utility: an ornament describes itself, when it strikes the eye its purpose is effected; or it may refer merely to the explanation of a complex form, the connection of the fixed and moving parts, and their thickness, &c. If the introduction of words have any effect in this matter, it must be to give latitude of construction. A drawing of a globe and a column, a pipe and a ring, a circle and a shilling would be different, but the WORD round is applied to every one of them. The WORD triangle pledges you to no proportion; it may be equilateral, rectangular, isosceles, or obtuse.

As the act is so inexplicit, let us consider its origin and intent. Now it is a mistake to mix it up with patentism; it was not intended to take off a slice of the patent law; the collision of the two systems was not thought of. There were two arguments for the new act, the *æquo* and the *bono*. The *bono* was to stop the constant attempts at calling an ingenious design for use an ornament; the *æquo* was the evident want of some cheap and convenient protection, and the propriety of making the registering machinery available for it. Utility produced by form is as much

a matter of principle as a patent. A colourable variation of an ornament is tested by the eye, but it is not so with form applied to useful purposes; there, much modification in the geometric element of the combination may leave the useful form the same. Suppose a button to be now first invented, it may have metal shanks to attach them; or screws, as in some modern studs; or holes for the needle; it may be concave or convex, facetted or conical; but, in respect of its utility for a coat, the shape is in principle the same. The disc is the novelty, the rest is variation, addition and subtraction. It seems questionable whether a new kind of textile fabric would be registrable. Suppose a particular mode of ribbing or cording cloth to render it durable. It differs from the usual cases in two points; first, that instead of an individual shape, it is the endless repetition of a shape. A paving block was at one time registered, and probably was a fair subject; the unit link of a chain is somewhat analogous. The other difference is, that the shape is not perceptible to or analyzed by the eye. I presume that the geometric scale of the registration, however, would allow of a magnified view as well as a reduction. There is one rather curious subject of registration, viz. new forms of letters, type. It is not very easy to see how a Roman or Italic letter is a shape or configuration; it seems much more like the patterns for printing, &c., which were omitted in the utility act. As to the utility, it would be difficult to prove them more legible than the common character, whatever be their advantage in point of neatness. And, thirdly, in point of novelty, they are probably letters old as to engraving; if therefore the utility intended by the act be utility in use, they are old; the shape is indeed obtained by a new mode, viz. types movable instead of a copper-plate; but the type is not registered. What precedes relates to the question whether certain inventions were or were not registrable; but there is a yet more difficult case. Suppose *both* systems claim it. The patentee must describe an arrangement capable of effecting his process, the best too that he knows at the

time; but he is by no means confined to that. In Crossley v. Beverley it was said that there might be a thousand ways of doing a thing, and every one of these are in the letters-patent; now, out of these thousand it is likely enough that the inventor will not hit upon the best. The inventor of this best modification may chance to be another person; and it is difficult not to apprehend that disputes may occur. However this may be, there is one tract of debateable land on which some contention has actually taken place, and which has attracted considerable notice as a glaring anomaly; it arises out of the entire absence of harmony in the modes of creating patent and registration rights. The latter is very simple; the right commences simultaneously with the publication; but a patentee first obtains his patent, and six months afterwards publishes a complete account of it. Now during this six months, there is nothing (conscience apart) to prevent his seizing on any other invention which comes to his knowledge, and putting it into his specification, provided only that it come within the range of a vague title, such as "Improvements in Steam Engines;" and, in at least two instances, the patent has actually covered an idea registered as new, after the period when the CONSEQUENCE of publication commenced, but before the actual fact. One was Brett v. Electric Telegraph Company. This was not a case of fraud; there was said to be "no imputation." The interest of the subject had attracted the attention and labour of different persons; and two individuals had, in perfect integrity, invented similar constructions; the plaintiff had obtained his patent for a percolating battery; immediately after, a party in connection with the defendants, ignorant of this (the specification being still to come), registered his battery, and the injunction obtained against him showed that his registration was quite worthless. One might almost expect to hear of the inventor prosecuting Government for obtaining money under false pretences. It is true their instructions disclaim guaranteeing any thing to the regis-

teree, and recommend him to read the act and to use his discretion; but does not that imply that a man who did read the act and did use discretion should be protected; and how could he find, by reading the act and using discretion, that the Government, when they took his money, were selling a right twice over, by keeping secret the terms of the first contract? It may be thought that Government would at all events be consistent in their injustice, and let the patentee in all cases over-ride the registeree; but it is not so. A patentee applies for a patent a month before he gets it; during this period, notice is given to any holder of caveats on allied subjects; now, supposing any one to have stumbled on something similar, or fraudulently discovered the invention, he may start off at once, and in a few hours register the invention: the value of the registration may be doubtful; probably the application for the patent even unaccompanied by a deposit of drawings and description, would publish the idea and upset the registration; but it is quite clear that the registration would destroy the patent. Both these evils are disgraceful to the statute-law, and exhibit the patchwork character of our legislation. The latter evil should be remedied by dating the patent, when granted, from the application. With reference to the other point, the plan of depositing an abstract of the invention, which is sometimes done under opposition, should be made an absolute and general rule, and made legally available as a record. If six months are required to describe the details of invention (and it is difficult to reconcile the one day of the registration with the six months in the other case, one period must be very short, or one very long), at all events the novelty which is claimed ought to be clearly stated on such application. If a man has but an indefinite idea wandering among his thoughts, he has no business to hinder others from pursuing the subject with more activity than himself. Let him have time to select his details afterwards; these are no part of the invention, they are chosen from the common

stock. The other case bearing on the above points was that of Brown and Haynes where two parties who had been connected with one another laid claim to the invention of a windlass controller; the defendant's patent was opposed, and therefore a deposit made; then the plaintiff registered before the patent and prosecuted the patentee for breach of registration-right; the decision was, that the registration was not new, as being published by the deposit: this was not by a court of record.

SECTION IV.

PRACTICAL APPLICATIONS.

1. Previously to publication. The design, previous to publication, is like the MS. of a book, the entire and absolute property of the author, as much so as if the idea had never been committed to the paper. He may withhold it from the public altogether; he may "line his trunk with it," as one of the judges said; he may prevent its exhibition, or even its description by a catalogue. The right to publish in all these cases adheres to the person, is heritable, and escapes the claim of bankruptcy, whatever may become of the materials in which the right inheres. What constitutes a publication or dedication to the public is perhaps not clear. In the analogous case of a MS. lecture, the delivery by the author or transferee is not publication (see act), but it would seem that dramatic representation is. In Prince Albert's case copies of the etchings had been given away; probably the apparent intention of the author would be looked to; thus the giving copies of designs for a house by an architect would not amount to an abandonment of his right; and the plates in a book published are at the same time matter of separate copyright as prints, as in the case of Wilkins, Blackwell and Roworth. Jarman's work says, that equity probably will not enforce a contract to execute an idea or plan of a work of art, on account of the impossibility of enforcing performance, leaving the in-

jury to be remedied by damages. In the same work will be found an outline of an agreement for the writing and publishing a book, which may serve as a model for engraving a plate, &c. Although the form is of little consequence in such agreements, and the performance must depend so entirely on the skill or good faith of the parties, yet written memorandums are always best. When Wilkie painted his first successful picture to commission, the price offered was fifteen guineas. Wilkie proposed thirty guineas, and no more was said. When the picture was finished, Wilkie said he had not assented to the fifteen guineas, and the patron said he had not offered thirty guineas. The author may share the profit, if any, or profit and loss, or receive a fixed sum; the payment may be absolute, or proportioned to the number of copies struck off or sold. While unpublished the printer has a lien upon it, but cannot seize it. The publisher, however, has a right of injunction against third persons. A dishonest purloining of a design, by means of intercourse or dealing with the author, would in many cases be a breach of trust; as by a printer employed to take off impressions, or a party who had been treating for the purchase of the design. The designs act expressly defines the proprietor of the design to be, first, the author; or secondly, the purchaser (for a good consideration, so that a man who had been presented with a design could not himself register, but only get it transferred); or thirdly, the person to whom it may be transferred or may devolve. The wording of the act is more definitely expressed than that of the sculpture act, which says, "who shall make or cause to, &c.," which leaves it open which of the two or whether both. The copyright of a print, however, is in the inventor or designer alone, whether he execute the engraving or employ another. The questions relating to publications abroad are still in an unsettled state; a print, however, must be engraved here, it being held in Page's case, that the condition to that effect in the last engraving act applies to all three.

An alien is probably as competent to register a design as he is to take a patent; but the design must be new, unpublished here and elsewhere. An inventor who intends to turn his design to profit in other countries must be cautious, as in most countries publication here destroys all the right.

2. The next point for consideration is the policy of the owner's availing himself of the right. A painter needs no registration, his work is inimitable; and while in his keeping there are no mechanical modes of copying without long and elaborate processes; nor would it be easy to steal a cast of a statue. The number of probable copies require notice; if few, it will be the less worth while to incur the expense of the mould or plate. If the demand be occasional only, the copyright will expire too long before the value of the article; but the copyright for a short period may during that time give a firm hold of the market, and the articles must not, during the existence of the right, be even begun to be made. When the public cannot verify, but must buy on the good faith of the maker, his name and tradesmark (which are legally protected) may confine the trade to the inventor. If the demand be likely to be very transient, the first starter may pour into the market all that it will hold, and leave only a few stray gleanings. If the number of absolute copies, as of a book, allow of stereotyping, this will bid defiance to piracy; and when the article varies much in its application, it will involve more difficulty to claim the identity of form; but it will also, by leaving more to skilful adaptation in each peculiar case, make the subject more independent of copyright. In proportion as the number of copies increases, not only does the necessity for protection increase, but its cost decreases; a million copies of a registration pay no more than one. Registration is often only one of the innumerable contrivances for puffing; it may, however, be sometimes almost necessary to adopt registration, or subject the article to the suspicion on the part of the public

of its not being worth it. On some points there is a choice as to the mode of protection, but the rules warn the registerer that the nature and extent of the rights conferred are left to his own judgment and discretion; and care must be taken to choose well in the first instance. Any registration publishes the design, and is irreparable. A map may be claimed as a book; or left to its fate, as a print: and useful invention is in some cases patentable or registrable. In this case the term must be carefully considered, and the cost and value of the subject, and the probability of an extension of registration law may perhaps be an element in the calculation. One of the registered designs was for a "right-angled beam steam-engine," which, if worth any thing, was worth a patent. It may sometimes be advisable to register a design in two or three classes, to prevent a shawl pattern from being "vulgarized" by using it for calico, carpet or paper.

It is difficult to draw a line between the ornamental forms and shapes of the designs acts and the subject of the old sculpture. It was suggested to the arts' committee that foliages, arabesques, vases and candelabra, were not within the words "matter of invention," and that the gates at Constitution Hill, for instance, were either unprotected, or at all events might be copied with impunity, so as the royal supporters on the arms were not taken; but with regard to foliage, when the act had specified man and animals, vegetable forms seem to be the next subjects that occur. Since the design acts, however, it is possible that the latter would be held to imply an exclusion of such ornaments from the sculpture acts, the existence of which they expressly notice.

It will be remembered that the registration, even when defective, throws the burden of proof on the opposing party. As to the clashing with the patents that are or may be, it must, till the law be altered, be risked: it is not likely to occur often.

3. As to the forms of securing the right. Sculpture

presents nothing remarkable; the name and date must be attached to the model before publication. It seems to be inferred that this would ensure the name being on the copies published. The attaching a name to prints, however, has led to a great deal of difficulty and conflict (almost all the print cases touch upon it). The result appears to be, that the three acts must be taken together; that the date is essential in all cases; that the word "proprietor" is unnecessary; and that the name of the ORIGINAL owner must appear. No particular form is requisite, nor is it of consequence probably whether the name of the artist be fictitious or real, provided no deception be intended on the public. See the book cases, and a design case, Baily's, in which a design drawn by N. Wanostrocht had been sold as a design by M. Felix.

In an old case, Jendwine, this latitude was pushed a long way. Pictures were described in a catalogue as by Claude, Teniers and others; it was held to be no warranty, the genuineness on this point being matter of opinion, and no opportunity of calling Claude or Teniers as witnesses. Prints are seldom registered at Stationers' Hall. On the registration of designs for ornament, the instructions of the registrar supply ample information. The real pattern is usually, in point of size, admissible, if not, a pentagraph would reduce it. Any solid shape might be traced by the aid of a camera or sketching glass; minute details, if not forming part of the novel combination, are not necessary, and indeed are better avoided, as affording a handle for colourable imitation.

The direction as to the size of the design, as to which may be samples, and which must be drawings, are reasonable; but I doubt in what part of the act the authority for them is to be found. All designs registered by one person at the same time receive one mark. A statement of the class to which the design is to be applied is all the description required. Thus, "I, A. B., of ——, claim to

be proprietor of this design, and desire you to register it in class ——."

The registry of useful design requires care and discretion. It is a miniature patent specification. The first point is to get a distinct idea of the essential form, looking to the probable variation it may be capable of, without losing its useful effect or property, and thence adopting the central type or standard of it. Next, the novelty should be clearly distinguished, and it would be best to draw the imaginary variations of the plan and the old shape which it is to supply the place of, if it be an improvement, or, if the use itself be new, the old shapes which are combined in it. It may then be seen exactly what the drawing for actual registration ought and ought not to show. The simpler the drawing is the better; the act only requires it to be accurate (to a scale) and intelligible. Details, if required, should be drawn slightly, or shaded over; if prominent, they tend to narrow the range of the idea. If part of the article be new and part old, it is convenient to draw one part in red and the other in black lines. If it be a combination of old parts, these may be drawn separately, and then shown together. The drawing may be from any side, or from a section, and may show the article in various positions, or its application by dotted lines, care being taken to make the shape conspicuous, as being what is registered, and not the use or action of it. In a few cases, instead of a drawing, a specimen, as a button, is deposited, if capable of being placed on the page of a book. The next thing is the description to explain the drawing, and define the claims as to novelty; supposing the new and old portions already drawn in distinction, a brief reference will effect the latter object. If the general combination be new, no disclaimer is necessary. The description will state the "purpose of utility," —may mention the particular material for which the form is best adapted, and may repeat in words and make clear the shape itself, referring, if necessary, to marks on parts

of the drawing. Part (A) is so and so. The written description should be relied on as much as possible. A word gives the vital principle of a shape, while to many persons a drawing binds the idea down to one particular set of proportions. A spiral spring, for instance, is really a useful shape,—useful by allowing an electric wire to be coiled into compact form; and it is usually made in a cylindrical form (a helix). If a pirate attempted to evade it by a wire coiled into a double cone, like an hour-glass, that would be equally a "spiral spring." But if both were drawn, the pirate would ask if they were of the same shape, which geometrically and optically they are not. They are only of the same shape as to utility, and the purpose is expressed in the description.

The registerer has also to choose his title; and in this, as well as the description, he should carefully avoid the use of those words which the act or the rules have put a black mark against, as principle, action, invention, &c. Processes and changes must only be mentioned as the application; the design itself must be shape, form and configuration. Thus a "new lever action" and "improvements in the art of cutting sails" are objectionable. Apart from this the registeree may please his own fancy. The name may be independent, or describe the articles as an improvement on the old one. Designs are occasionally refused registration. There is an appeal from the registrar to the Privy Council, who have in some instances reversed his decision. This appeal only applies to the total rejection of the design, not to the registrar's authority to decide between the ornamental and useful act. The drawing or print for the registration will often be serviceable by way of prospectus or advertisement. The design may be in the name of joint proprietors or a firm, and dated from any part. The only foreign place that occurs in the lists is Paris.

4. On the subject of the enjoyment of the right during its continuance there is little to remark. As the registra-

tion is secret, the owner of a design may keep back the publication as long as he pleases, though of course in most cases the design is not registered till immediately before publication, to get as long a term of protection as possible. The copies of all the kinds of copyright must have the mark upon them at the time of publication. Prints have the impression of the plate. Designs have, at all events till sold, the mark, either as a label attached to the end, or printed or moulded on any convenient part. It is an offence to put the designer's mark on any article after expiry of copyright, and knowingly to sell them; but the words do not seem to forbid the sale of an article marked during the copyright. The ornamental act also restricts the application of the mark to articles made in the United Kingdom, which condition is in the useful act probably implied, or would be extended to it. A similar exclusion was extended from the third engraving act to its predecessors.

5. The next consideration is as to the power of transference. Copyright is by a recent act expressly declared personalty. The mode of conveyance has been adopted from other descriptions of property, or inferred from casual expressions in the acts. But the limited duration of the right renders the conveyancer's art, to a considerable degree, superfluous; and, from the uncertain value of all such property, there is no nice calculation of pecuniary points. The sculpture act speaks of a deed; it seems doubtful whether this would be taken technically; the comparison with other copyright acts indicates otherwise. Probably any writing signed and witnessed would suffice. It seems doubtful whether, if the original proprietor should sell his right for fourteen years and no longer, he would, if living, obtain the contingent extension. The latter of the two sculpture acts provides at the expiration of the first term the right shall return. The original literary act was similar; but a recent act speaks of a contingent ENDURANCE of the copyright. The phrase "return" would be appropriate to

denote the resumption by an author who had sold his right. The clause must however INCLUDE those who have not parted with the first term. Does it therefore cover both classes? It is evident that it bestows nothing on the transferee; and difficult to see why a man, as a matter of justice, should by selling the first term lose a right to the second. The clause concludes by excepting those who have divested themselves of such right previous to the then present act. It is to be feared that Lord Ellenborough's strictures would apply as much to the second as to the first act.

Prints.—The acts take notice of, first, the purchaser of the plate, which it seems is to carry with it the copyright; this seems a little at variance with Lord Mansfield's observation, that the copyright existed when once created, independently of any copy or any plate. A stereotype would give no right to the copy of the book. The act also notices a license, by "writing attested," to make a copy of the plate, &c. or to import, print, sell or publish, &c. Of course the proprietor of a plate might permit the use of it to any limited extent. Any such license ought of course to be in writing, and had better be witnessed. A licensee or subproprietor would have equitable remedy against his landlord or principal. The terms of the agreement depend principally on the trade customs. An edition is an exclusive right till that number of copies be sold. A patent license may have reference to supply of a certain locality; the latter class would supply a model for licenses under useful designs, where much of the expense is incurred by the maker, while the ornamental design's right is probably exercised only by the holder of the plate, or type, or mould.

Copyright of course may be held in shares, and parties may take out a registration as they may a patent, and to be worked jointly, or by one of them, or made to yield a royalty. As to a covenant for quiet enjoyment, securing warranty, revocation, the name of the article, keeping account, arbitration, &c., see Jarman, &c.

The designs act contemplates the acquisition, for a good and valuable consideration (a superfluous restriction), of the design or part of it, exclusively or not of other persons. The next clause says, that the acquirer by purchase or any means (nothing about consideration) may enter his title at any time apparently in the registration (giving the proper forms.) The mode of transfer is any writing, purporting to be a transfer, signed; or if not acquired by purchase, any evidence satisfactory to the registrar, whose certificate is primâ facie proof of the transfer. The form commences with author or proprietor, which is superfluous, as the very last clause had included the former class under the latter term. The printed form circulated by the office has author *and* proprietor, which is a variation of the act, and in most cases inapplicable, the author and designer being not usually the same person. In any agreement or other instrument it would probably be well to mention the author, if not also the registered proprietor; if relating to a print, whether it were invented and engraved, or caused to be engraved from his own design, see the language of the act. The designs act provides a form for cases of transfer by devolution, which would include cases of death or bankruptcy, &c.

6. If the right be infringed on, we have a wrong or breach. These are not usually direct unmitigated plunder, but the piracy is disguised by variation, addition or subtraction. The intention to pirate, as far as the making is concerned, must be judged of by the result. The seller, if unaware of the illegality, escapes the two former engraving acts and the designs acts, see Blackwell's case. Each copy is a breach; and in the designs, making is one offence and selling another. This act forbids applying FOR SALE; from M'Crea's case it would seem to cover any application as for private use. Notwithstanding some broad expressions in Martin's case, it is difficult not to suppose that a work of art might be legally injured without its sale being supplanted, by debasing its reputation. " Exhibiting for profit

in a fixed place, in a given manner, producing an optical illusion," was certainly no way analogous to selling a copy. The diorama was not a copy of the print nor the exhibition.

The case of Nicoll v. Woolf was not for any piratical offence, but related to the imitation of the title or trades-mark of a registered article. The charge was not sustained, "Woolf's registered llama cloth paletot" being obviously no imitation of "The registered paletot." Taking impressions illegally from an original plate is not within the engraving acts, see Murray's case. Sculpture would follow the same rule. In the designs no such distinction could occur.

7. The remedies are, as regards the past; penalties for prints and designs, and damages for all classes, but the owner of the design must elect between the two: as regards the future; equitable interference.

These proceedings are before local magistrates in the case of designs, or in others the superior courts. The county courts appear to be adapted for cases where damages of less than £20 only are sought, and some such cases have actually occurred. The largest amount hitherto awarded in an inferior court is £15, Broadhead's case; and the costs seem to vary from 3*s*. to 60*s*. In a case at Liverpool the magistrate said the act only gave the costs of the hearing.

The equitable remedies are usually of an anticipatory nature: as an interim order, see Baily and Harrison; an injunction against using or vending on an exparte statement, the party answering in damages in the event of the injunction being dissolved on hearing. In Sheriff's case, however, some doubt was expressed whether an injunction affecting so shortlived a property might not be irreparable, see Wilkins. An injunction will also be given in case of a threat (see West's case), or when an article is being got up privately, and not yet brought into sale, see a patent case, Crossley's; and probably as to making an engraved

plate for the purpose of applying the design, though not in the act. The promptitude of these remedies render them peculiarly eligible, and Mr. Brace recommends them in preference even to proceedings before a magistrate; thus a bill may be filed and an order obtained (no notice being given) in one day, and may be opposed on the next. It may be granted on exhibits and affidavit, and is binding from the receipt of notice of it. The right, if disputed, must be tried promptly, an account or an inspection being given if required, and an action directed; or if more commodious, issues tried as in Sheriff: in this case, though the piracy only had been before the court, issues were directed as to piracy and originality. The courts of equity recognize a property in the copyright apart from the penal rights given by statute, but there is no power of confiscation by common law. As in all similar cases, delay or acquiescence weakens or destroys the resort to equitable protection; and any question of immorality would, upon Lord Eldon's principles (see book cases), prevent interference. Equity, again, will enforce the legal right. Costs are given and forfeiture of the goods, as in M'Crea's case, where the plates or blocks were confiscated, and the goods impounded till the end of the term; in that case the penalties were waived, the suit suspended, and the injunction made perpetual. In Fradella and Weller the injury was minute (16*s.*); the prints had been bought innocently, and there was no apprehension of a repetition of the offence, but as the case was allowed to go to hearing, costs were given to the plaintiff. Of a set of patterns, one may be tried and the rest follow it.

In choosing the mode of procedure, the effect of publicity in deterring others must be regarded, and sometimes the probability of the judge or magistrate going more or less into the minutiæ of the case. The penalty for prints is 5*s.* per copy. In any penalty proceeding, the case must be more accurately sustained, as the law is construed strictly.

As to the injury sustained by the infringer, when the separation of the pirated portions is destructive to his general work, he, said Lord Eldon, who has made an improper use of another's property must suffer the consequences.

In proceedings in Chancery, the names of all the parties interested must appear, as the author in the case of an edition of a book. An exparte plaintiff will undertake to make such compensation, if any, as the court may direct, in the event of the injunction being defeated. With reference to title in the case of prints, the designer and first engraver should be mentioned. Any contract must be stated as written, and that the date and name were " truly engraven on each plate, and printed on every such print;" see Colnaghi's case. As to designs, under the old act it seems to have been usual to state the designer, and that he was paid by the proprietor. And in M'Crea, the bill commenced by stating that A. B. for money, by the instruction and directions of C. D., invented, drew, designed, and thereby became the author of, &c., and C. D. the proprietor. But if the certificate be referred to, it would seem sufficient to say that A. B. was the proprietor of a registered design, by which he had a right for one year, &c. If any transfer has been registered, it would seem by clause 16 equally to supersede the mention of the previous stages of the history of the design; but probably the certificate is no evidence that the latter part of the 4th clause has been complied with, viz. the marking all articles, &c. Millingen's case does not seem to decide this. As to legal proceedings, it has been settled that they must be by and in the name of the " proprietor," any assignment stated as in writing, and the compliance with clause 4. The action for a design or print is in debt or on the case; sculpture on the case only. In Roworth's case the former counts related to the copyright of the book, and the 13th and 14th counts to publishing and selling, &c. the plates. The agent and seller cannot be included in the same action with the maker.

We may here take notice of the evidence required in legal or police proceedings. The certificate is the first point. In Broadhead's case this had been lost, and there appeared to be no small difficulty in replacing it. The design was for a candlestick, a solid form. Now there can be only one true copy of a pattern; and one slip cut out of any one yard of a thousand pieces of calico is as good as another. But a great many drawings may be made of a candlestick, all true, all different; and the particular drawing registered must not by the terms of the act be COPIED by any one. No provision is made for this difficulty.

In articles produced by mechanical means, all the copies will be precisely alike; if manual means be used, there will always be a risk of the original standard being somewhat modified, the temptation to which will especially occur in useful articles, which are probably somewhat imperfect in their first form. And discrepancies of detail, not really affecting the essential shape, seem material in the eye of a superficial observer. One mode of meeting this would be to show experimentally the identity of the effect.

The period within which actions must be commenced, was for prints at first three months from the discovery of the offence; then six months from the commission of the offence. The time in sculpture is six months from the discovery. For designs it was six months, and is now twelve from the commission. It is decided that the owner of a license upon a patent, or an edition of a copyright, may have special damages if himself injured, but not as regards the patent generally. In copyright it seems doubtful (Jarman) whether he ought to sue in his own name. The designs act provides that a registered owner of any part of a design is a proprietor. It may be remarked that copyright and plates form exceptions to the general rule, that equity does not inforce contracts for the sale of personal property. In some cases it may not be worth while to take any legal proceeding, but to serve notice upon the

sellers, who may not be anxious to involve themselves in a prosecution for the sake of a retailer's profit, (unless they are numerous, and form a stock purse). This is often the readiest way of getting at the actual pirate. If the manufacturer have capital, he will probably stand in awe of law procedure, thus a calico printing house in Glasgow, who had pirated, paid a forfeit of 100*l.*, and gave up their printing block and the goods printed; the former absolutely, the latter until the expiry of the term, besides making a public apology. The makers may, however, be numerous, or men of straw, and then the notice to the seller is the first step. No particular form is dictated; the notice, if written (a verbal notice to the party will do), should be signed by the proprietor or his agent, and may be served personally or left at his "residence."

The next point in proceeding before a magistrate is the summons. This must be before magistrates having jurisdiction where the offending party "resides;" not at his place of shop or manufactory. Two at least of the cases before magistrates, those of Kipling and Thorogood, failed on this ground. The form of information is given by this act; the design will be described by reference to the registration; "a design for ornamenting a certain article," &c., to wit, a fender, or a design for a certain article, &c., having reference, &c., to wit, a lamp. The offence will be, did apply the said design for the purpose of sale to the said article of manufacture, without, &c., or did publish or sell, or expose for sale; see the seventh clause. In M'Crea's case, after much discussion, the charge of APPLYING the design was held sufficient. Section 7 prohibits applying for sale; but section 3 gives a sole right to apply.

If it be dubious whether the pirate has used the design or imitated it, and whether he sold or exposed for sale, it may be well to make two heads or counts of the information—1st, the design; 2nd, an imitation of it. It may be remarked that part of this clause is either superfluous or in error. No one is to apply the design to ornamenting

any article of manufacture. Now if the word design means the artistic form or invention, it is erroneous; for if the design be registered for glass, any one may copy it in earthenware. If it means that registered design, viz., a shape for glass, &c., then the words have no meaning, the shape in another substance is no longer the design. If the matter in dispute be a useful design, it will be necessary in conclusion to cite both acts, adding to the end of the form given in the act, " and also a certain other act," &c. Throughout the whole of the proceeding it is essential to keep up the union, such and such a shape giving such and such purpose; purpose by itself will run foul of the registrar's " mechanical action, principle, &c.", and shape by itself will be open to easy evasion, and therefore worthless. It is certainly not necessary to produce a sample of the article, though its nonproduction is likely to prejudice the case, as the magistrate may be more acute to appreciate any thing like shirking or unfairness than the technical points of the case. It is, however, by no means requisite that the registeree should adhere to his own design, to maintain his right against others. In print cases it is not inevitably necessary, though usual, to produce the piratical impression, (in Fradella's case they had been stolen) if the piracy be not denied. In Thompson's case an original print was produced, and the plate dispensed with. The selling the piracy at a lower price is always a strong feature in the case; and sometimes the sale of it in a neighbouring shop, &c.; and in Broadhead's case a curious evidence of similarity of result was, that one of the original articles had been sent out (in mistake apparently) by the defendant, upon an order for the pirated one. The similarity of the result is usually the proof of invasion. Thus in Roworth's case the judge said that there had been no evidence by defendant to rebut the presumption from similarity. Circumstances relating to the means employed may come in aid; previous dealings relative to the manufacture of the article; previous infringe-

ments by the same party are sometimes alluded to. In Sheriff's case the defendant was proved to have obtained a copy of the plaintiff's pattern. In a case about a paper hanging, the designer, being cross-examined, " had told the proprietor that he could produce something that would work the same as plaintiff's pattern, but be different in fact." In Harrison's case the bill set forth that the parties who sold the handkerchiefs referred to Baily as the maker. The advertisements or prospectuses will be evidence; and in prosecuting for sale the notice must be proved and the purchaser of the article produce the invoice. In proceedings in equity, if the matter be simple and obvious, the court will decide by inspection thereof; if more elaborate questions occur, they will be referred to a master; see Fradella. With reference to the exhibition of samples, in a case of Spottiswoode, relating to the imitation of a title-page, &c., the court on comparison of exhibits said it was, if a fraud, a clumsy one. This suggests the propriety of trying the effect of an original and an imitation, not side side, but separately; one might supplant the other, where the purchaser did not compare the two, and yet be far from identical. On the part of the defendant, the question of originality, on which patents and useful design constantly turn, occurs much less with ornament. Old books or engravings are however sometimes produced to dispute this. The case of Millingen turned on the effect of a plea denying that plaintiff was the inventor or proprietor of a design registered, &c. This was held by L. C. J. Tindal and the other judges not to raise the question of the design being a principle or a fit subject of registration. It was only saying " you did not invent it, nor did you pay for it." If the proceedings in Chancery are opposed, the injunction may be dissolved with or without costs. In cases where a party has been injured by malicious or fraudulent notices to sellers, damages might probably be obtained.

Comparative Duration and Expense of Intellectual Property.

Order of their being established by Statute.	DURATION.		COST.	
	England.	France.	England.	France.
Patents	14 years	Optional, 5, 10, 15	345*l.*	100 francs annually
Literature, music, maps	Life + 7 (42 at least)	Life, widow, and 20 years	5 copies, 5*s.*	2 copies
Engravings, maps	28	Life, widow, and 10 years	0	0
Sculpture	14, and 14 more to a survivor		0	
Drama and music not published	Life + 7 (42 at least)	Life, widow, and 5 years	5*s.*	
Lectures not published	Unlimited		0	
Design, ornamental — Pattern* — Paper	3	Optional, 1, 2, 5, or perpetuity	10*s.*	1 franc annually
Design, ornamental — Pattern* — Carpet, shawl (woven)	3		20*s.*	
Design, ornamental — Pattern* — Garment calico, shawls (printed)	¾		1*s.*	
Design, ornamental — Pattern* — Furniture ditto	3		5*s.*	
Design, ornamental — Pattern* — Lace, &c.	1		5*s.*	
Design, ornamental — Shape — Metal	3	Life, widow, and 10 years	3*l.*	0
Design, ornamental — Shape — Glass, &c.	3		20*s.*	
Design, useful	3	(As patents?)	10*l.*	(As patents?)

* But calico and linen patterns had a short term before this; they would stand fourth on the list.

APPENDIX.

8 Geo. II. c. 13.

An Act for the Encouragement of the Arts of designing, engraving and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the Time therein mentioned.

Whereas divers persons have by their own genius and industry, pains and expense, invented and engraved, or worked in mezzotinto or chiaro oscuro, sets of historical or other prints, in hopes to have reaped the sole benefit of their labours: and whereas printsellers and other persons have of late, without the consent of the inventors, designers and proprietors of such prints, frequently taken the liberty of copying, engraving and publishing, or caused to be copied, engraved and published, base copies of such works, designs and prints, to the very great prejudice and detriment of the inventors, designers and proprietors thereof; for remedy thereof and for preventing such practices for the future, may it please your majesty that it be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch or work in mezzotinto or chiaro oscuro, or from his own works and inventions shall cause to be designed and engraved, etched or worked in mezzotinto or chiaro oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty-fourth day of June, one thousand seven hundred and thirty-five, within the time limited by this act, shall engrave, etch or work as aforesaid, or in any other manner copy and

sell, or cause to be engraved, etched or copied and sold, in the whole or in part, by varying, adding to or diminishing from the main design; or shall print, reprint or import for sale, or cause to be printed, reprinted or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them respectively in the presence of two or more credible witnesses; or, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors, shall publish, sell or expose to sale, or otherwise, or in any other manner dispose of or cause to be published, sold or exposed to sale, or otherwise, or in any other manner dispose of any such print or prints, without such consent first had and obtained as aforesaid; then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied or printed), to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be found in his or their custody, either printed or published and exposed to sale, or otherwise disposed of contrary to the true intent and meaning of the act; the one moiety thereof to the king's most excellent majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of his majesty's courts of record at Westminster by action of debt, bill, plaint or information, in which no wager of law, essoign, privilege or protection, or more than one imparlance shall be allowed.

2. Provided nevertheless, that it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates for printing from the original proprietors thereof to print and reprint from the said plates without incurring any of the penalties in this act mentioned.

3. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done anything in pursuance of this act, the same shall be brought within the space of three months after so doing, and the defendant or defendants in such action or suit shall or may plead the general issue and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited or discontinue his, her or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have

the same remedy as any other defendant or defendants in any other case hath or have by law.

4. Provided always, and be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons for any offence committed against this act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards; anything in this act contained to the contrary notwithstanding.

5. And whereas John Pine, of London, engraver, doth propose to engrave and publish a set of prints copied from several pieces of tapestry in the House of Lords and his majesty's wardrobe, and other drawings relating to the Spanish invasion in the year of our Lord one thousand five hundred and eighty-eight; be it further enacted by the authority aforesaid, that the said John Pine shall be entitled to the benefit of this act to all intents and purposes whatsoever, in the same manner as if the said John Pine had been the inventor and designer of the said prints.

6. And be it further enacted by the authority aforesaid, that this act shall be deemed, adjudged and taken to be a public act, and be judicially taken notice of as such by all judges, justices and other persons whatsoever, without specially pleading the same.

7 Geo. III. c. 38.

An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of designing, engraving and etching historical and other Prints; and for vesting in and securing to Jane Hogarth, Widow, the Property in certain Prints.

Preamble, reciting act 8 Geo. 2.

Whereas an act of parliament, passed in the eighth year of the reign of his late majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the Time therein mentioned," has been found ineffectual for the purposes thereby intended; be it enacted by the king's most excellect majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that from and after the first day of January, one thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch or work in mezzotinto or chiaro oscuro, or, from his own

The original inventors, designers or engraver, &c. of historical and

other prints, and such as shall cause prints to be done from works, &c. of their own invention;

work, design or invetion, shall cause or procure to be designed, engraved, etched or worked in mezzotinto or chiaro oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape or architecture, map, chart or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said act and this act, under the restrictions and limitations hereinafter mentioned.

and also such as shall engrave, &c. any print taken from any picture, drawing, model or sculpture;

are entitled to the benefit and protection of the recited and present act;

and those who shall engrave or import for sale copies of such prints are liable to penalties.

2. And be it further enacted by the authority aforesaid, that from and after the said first day of January, one thousand seven hundred and sixty-seven, all and every person and persons who shall engrave, etch or work in mezzotinto or chiaro oscuro, or cause to be engraved, etched or worked, any print taken from any picture, drawing, model or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said act and this act for the term hereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher or draftsman; and if any person shall engrave, print and publish, or import for sale, any copy of any such print contrary to the true intent and meaning of this and the said former act, every such person shall be liable to the penalties contained in the said act, to be recovered as therein and hereinafter is mentioned.

The sole right of printing and reprinting the late W. Hogarth's prints

3. And whereas William Hogarth, late of the city of Westminster, painter and engraver, did etch and engrave, and cause to be etched and engraved, several prints from his own invention and design, the property and sole right of vending all such prints being secured to him the said William Hogarth for the term of fourteen years from their first publication by the said former act of parliament; which said property by his last will became vested in his widow and executrix: and whereas since the first publication of several of the said prints the term of fourteen years is expired, and several base copies of the same have been since printed and published, whereby the sale of the originals has been considerably lessened, to the great detriment of the said widow and executrix: and whereas since the publication of others of the said prints, the term of fourteen years is now near expiring; be it enacted by the authority aforesaid, that Jane Hogarth, widow and executrix of the said William Hogarth, shall have the sole right and liberty of printing and reprinting all the said prints, etchings and engravings of the design and invention of the said William Hogarth for and during the term of twenty years, to commence from the said first day of January, one thousand seven hundred and sixty-seven; and that all and every person and persons who shall at any time hereafter, before the expiration of the said term of twenty years, en-

vested in his widow and executrix for the term of twenty years.

Penalty of copying, &c. any of them be-

grave, etch or work in mezzotinto or chiaro oscuro, or otherwise copy, sell or expose to sale, or cause or procure to be etched, engraved or worked in mezzotinto or chirao oscuro, any of the said works of the said William Hogarth, shall be liable to the penalties and forfeitures contained in this and the said former act of parliament, to be recovered in like manner as in and by this and the said former act are given, directed and appointed. fore the expiration of the said term.

4. Provided nevertheless, that the proprietor or proprietors of such of the copies of the said William Hogarth's works, which have been copied and printed and exposed to sale after the expiration of the term of fourteen years from the time of their first publication by the said William Hogarth, and before the said first day of January, shall not be liable or subject to any of the penalties contained in this act, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. Such copies excepted as were made and exposed to sale after the term of fourteen years, for which the said works were first licensed, &c.

5. And be it further enacted by the authority aforesaid, that all and every the penalties and penalty inflicted by the said act, and extended and meant to be extended to the several cases comprised in this act, shall and may be sued for and recovered in like manner and under the like restrictions and limitations as in and by the said act is declared and appointed; and the plaintiff or common informer in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former act) shall recover the same, together with his full costs of suit. Penalties may be sued for as by the recited act is directed; and be recovered with full costs;

6. Provided also, that the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed. provided the prosecution be commenced within six months after the fact.

7. And be it further enacted by the authority aforesaid, that the sole right and liberty of printing and reprinting intended to be secured and protected by the said former act and this act shall be extended, continued and be vested in the respective proprietors for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former act mentioned. The right intended to be secured by this and the former act vested in the proprietors for the term of twenty-eight years from the first publication.

8. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done anything in pursuance of this act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action or suit shall or may plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or the plaintiff or plaintiffs become nonsuited, or discontinue Limitation of actions. General issue. Full costs.

his, her or their action or actions, then the defendant or defendants shall have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

17 Geo. III. c. 57.

An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.

Recital of acts 8 Geo. 2 and 7 Geo. 3.

Whereas an act of parliament passed in the eighth year of the reign of his late majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the Time therein mentioned:" and whereas by an act of parliament passed in the seventh year of the reign of his present majesty, for amending and rendering more effectual the aforesaid act, and for other purposes therein mentioned, it was (among other things) enacted, that from and after the first day of January, one thousand seven hundred and sixty-seven, all and every person or persons who should engrave, etch or work in mezzotinto or chiara oscuro, or cause to be engraved, etched or worked any print taken from any picture, drawing, model or sculpture, either ancient or modern, should have and were thereby declared to have the benefit and protection of the said former act and that act for the term thereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher or draughtsman: and whereas the said acts have not effectually answered the purposes for which they were intended, and it is necessary for the encouragement of artists, and for securing to them the property of and in their works, and for the advancement and improvement of the aforesaid arts, that such further provisions should be made as are hereinafter mentioned and contained: may it therefore please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, one thousand seven hundred and seventy-seven, if any engraver, etcher, printseller or other person, shall, within the time limited by the aforesaid acts, or either of them, engrave, etch or work, or cause or procure to be engraved, etched or worked in mez-

After June 24, 1777, if any engraver, &c. shall, within the time limited by the aforesaid acts, engrave or

zotinto or chiaro oscuro or otherwise, or in any other manner copy in the whole or in part, by varying, adding to or diminishing from the main design, or shall print, reprint or import for sale, or cause or procure to be printed, reprinted or imported for sale, or shall publish, sell or otherwise dispose of, or cause or procure to be published, sold or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape or architecture, map, chart or plan, or any other print or prints whatsoever, which hath or have been or shall be engraved, etched, drawn or designed in any part of Great Britain, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit.

etch, &c. any print without the consent of the proprietor, he shall be liable to damages and double costs.

38 Geo. III. c. 71.

An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned.

[21st June, 1798.

Whereas divers persons have by their own genius, industry, pains and expense, improved and brought the art of making new models and casts of busts, and of statues of human figures and of animals to great perfection, in hopes to have reaped the sole benefit of their labours; but that divers persons have (without the consent of the proprietors thereof) copied and made moulds from the said models and casts, and sold base copies and casts of such new models and casts, to the great prejudice and detriment of the original proprietors, and to the discouragement of the art of making such new models and casts as aforesaid: for remedy whereof, and for preventing such practices for the future, may it please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that, from and after the passing of this act, every person who shall

Preamble.

The sole right and property of

making models or casts shall be vested in the original proprietor.

make or cause to be made any new model, or copy or cast made from such new model, of any bust or any part of the human figure, or any statue of the human figure, or the head of any animal or any part of any animal, or the statue of any animal, or shall make or cause to be made any new model, copy or cast from such new model in alto or basso relievo, or any work in which the representation of any human figure or figures, or the representation of any animal or animals shall be introduced, or shall make or cause to be made any new cast from nature of any part or parts of the human figure, or of any part or parts of any animal, shall have the sole right and property in every such new model, copy or cast, and also in every such new model, copy or cast in alto or basso relievo, or any work as aforesaid, and also in every such new cast from nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same: provided always, that every person who shall make or cause to be made any such new model, copy or cast, or any such model, copy or cast in alto or basso relievo, or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his or her name to be put thereon, with the date of the publication, before the same shall be published and exposed to sale.

Persons making copies of any model or cast without the consent of the proprietor may be prosecuted.

2. And be it further enacted, that if any person shall, within the said term of fourteen years, make or cause to be made any copy or cast of any such new model, copy or cast, or any such model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to or diminishing from any such new model, copy or cast, or adding to or diminishing from any such new model, copy or cast in alto or basso relievo, or any such work as aforesaid, or adding to or diminishing from any such new cast from nature, or shall cause or procure the same to be done, or shall import any copy or cast of such new model, copy or cast, or copy or cast of such new model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid for sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to sale, or otherwise disposed of, any copy or cast of any such new model, copy or cast, or any copy or cast of such new model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her or them respectively, with his, her or their hand or hands, in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid, every

proprietor or proprietors of any such original model, copy or cast, and every proprietor or proprietors of any such original model or copy or cast in alto or basso relievo, or any such work as aforesaid, or the proprietor or proprietors of any such new cast from nature as aforesaid respectively, shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with full costs of suit.

Except such persons who shall purchase the same of the original proprietor.

3. Provided nevertheless, that no person, who shall hereafter purchase the right, either in any such model, copy or cast, or in any such model, copy or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature, of the original proprietor or proprietors thereof, shall be subject to any action for vending or selling any cast or copy from the same, anything contained in this act to the contrary hereof notwithstanding.

Limitation of actions.

4. Provided also, that all actions to be brought as aforesaid against any person or persons for any offence committed against this act shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

54 Geo. III. c. 56.

An Act to amend and render more effectual an Act of his present Majesty for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned, and for giving further encouragement to such Arts.

[18th May, 1814.]

38 Geo. 3, c. 71.

Whereas by an act passed in the thirty-eighth year of the reign of his present majesty, intituled "An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned," the sole right and property thereof were vested in the original proprietors for a time therein specified: and whereas the provisions of the said act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same, and to make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in their works, and for the advancement of the said arts: may it therefore please your majesty that it may be enacted, and be it enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the

The sole right and property of all new and original sculpture, models, copies and casts vested in the proprietors for fourteen years.

same, that from and after the passing of this act, every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal, combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy and cast of the human figure or human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy and cast representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy and cast of any subject, being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy and cast in alto or basso-relievo, representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same: provided, in all and in every case, the proprietor or proprietors do cause his, her or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy or cast, and on every such cast from nature, before the same shall be put forth or published.

Works published under the recited act vested in the proprietors for fourteen years.

2. And be it further enacted, that the sole right and property of all works which have been put forth or published under the protection of the said recited act, shall be extended, continued to and vested in the respective proprietors thereof for the term of fourteen years, to commence from the date when such last-mentioned works respectively were put forth or published.

Persons putting forth pirated copies or pirated casts may be prosecuted.

3. And be it further enacted, that if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture, or model or copy, or cast of the human figure or human figures, or of any such bust or busts,

or of any such part or parts of the human figure, clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matters or things put forth or published under the protection of this act, or of any works which have been put forth or published under the protection of the said recited act, the right and property whereof is and are secured, extended and protected by this act, in any of the cases as aforesaid, to the detriment, damage or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors, or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

Damages and double costs.

4. Provided nevertheless, that no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her, or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying or casting or vending the same, any thing contained in this act to the contrary notwithstanding.

Purchasers of copyright secured in the same.

5. Provided always, and be it further enacted, that all actions to be brought as aforesaid against any person or persons for any offence committed against this act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

Limitation of actions.

6. Provided always, and be it further enacted, that from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model or copy, or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself or themselves, of such right of making

An additional term of fourteen years, in case the maker of the original sculpture, &c. shall be living.

or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this act.

6 & 7 Will. IV. c. 59.

An Act to extend the Protection of Copyright in Prints and Engravings to Ireland. [13th August, 1836.]

17 Geo. 3, c. 57.

Whereas an act was passed in the seventeenth year of the reign of his late majesty King George the Third, intituled "An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases:" and whereas it is desirable to extend the provisions of the said act to Ireland: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act all the provisions contained in the said recited act of the seventeenth year of the reign of his late majesty King George the Third, and of all the other acts therein recited, shall be and the same are hereby extended to the united kingdom of Great Britain and Ireland.

Provisions of recited act extended to Ireland.

Penalty on engraving or publishing any print without consent of proprietor.

2. And be it further enacted, that from and after the passing of this act, if any engraver, etcher, printseller or other person shall, within the time limited by the aforesaid recited acts, engrave, etch or publish, or cause to be engraved, etched or published, any engraving or print of any description whatever, either in whole or in part, which may have been or which shall hereafter be published in any part of Great Britain or Ireland, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor shall and may, by and in a separate action upon the case, to be brought against the person so offending in any court of law in Great Britain or Ireland, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit.

5 & 6 Vict. c. 100.

An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture. [10th August, 1842.

Whereas by the several acts mentioned in the Schedule (A) to this act annexed there was granted, in respect of the woven fabrics therein mentioned, the sole right to use any new and original pattern for printing the same during the period of three calendar months: and whereas by the act mentioned in the schedule (B) to this act annexed there was granted, in respect of all articles except lace, and except the articles within the meaning of the acts herein-before referred to, the sole right of using any new and original design, for certain purposes, during the respective periods therein mentioned; but forasmuch as the protection afforded by the said acts in respect of the application of designs to certain articles of manufacture is insufficient, it is expedient to extend the same, but upon the conditions hereinafter expressed: now for that purpose, and for the purpose of consolidating the provisions of the said acts, be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lord's spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that this act shall come into operation on the first day of September, one thousand eight hundred and forty-two, and that thereupon all the said acts mentioned in the said schedules (A) and (B) to this act annexed shall be and they are hereby repealed.

Commencement of act, and repeal of former acts.

2. Provided always, and be it enacted, that notwithstanding such repeal of the said acts, every copyright in force under the same shall continue in force till the expiration of such copyright; and with regard to all offences or injuries committed against any such copyright before this act shall come into operation, every penalty imposed and every remedy given by the said acts, in relation to any such offence or injury, shall be applicable as if such acts had not been repealed; but with regard to such offences or injuries committed against any such copyright after this act shall come into operation, every penalty imposed and every remedy given by this act in relation to any such offence or injury shall be applicable as if such copyright had been conferred by this act.

Proviso as to existing copyrights.

3. And with regard to any new and original design (except for sculpture and other things within the provisions of the several acts mentioned in the schedule (C) to this act annexed), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance,

Grant of copyright.

artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined; be it enacted, that the proprietor of every such design, not previously published either within the united kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such substances as aforesaid, provided the same be done within the united kingdom of Great Britain and Ireland, for the respective terms hereinafter mentioned, such respective terms to be computed from the time of such design being registered according to this act; (that is to say,)

In respect of the application of any such design to ornamenting any article of manufacture contained in the first, second, third, fourth, fifth, sixth, eighth or eleventh of the classes following, for the term of three years:

In respect of the application of any such design to ornamenting any article of manufacture contained in the seventh, ninth or tenth of the classes following, for the term of nine calendar months:

In respect of the application of any such design to ornamenting any article of manufacture or substance contained in the twelfth or thirteenth of the classes following, for the term of twelve calendar months:

Class 1.—Articles of manufacture composed wholly or chiefly of any metal or mixed metals:

Class 2.—Articles of manufacture composed wholly or chiefly of wood:

Class 3.—Articles of manufacture composed wholly or chiefly of glass:

Class 4.—Articles of manufacture composed wholly or chiefly of earthenware:

Class 5.—Paper-hangings:

Class 6.—Carpets:

Class 7.—Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics:

Class 8.—Shawls not comprised in class 7:

Class 9.—Yarn, thread or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced:

Class 10.—Woven fabrics, composed of linen, cotton, wool, silk or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, excepting the articles included in Class 11:

Class 11.—Woven fabrics, composed of linen, cotton, wool, silk or hair, or of any two or more of such materials, if the design be applied by printing or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the design whereof shall be more than twelve inches by eight inches:

Class 12.—Woven fabrics, not comprised in any preceding class:

Class 13.—Lace, and any article of manufacture or substance not comprised in any preceding class.

Conditions of copyright.

4. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act, with regard to any design in respect of the application thereof to ornamenting any article of manufacture, or any such substance, unless such design have before publication thereof been registered according to this act, and unless at the time of such registration such design have been registered in respect of the application thereof to some or one of the articles of manufacture or substances comprised in the above-mentioned classes, by specifying the number of the class in respect of which such registration is made, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every such article of manufacture or such substance to which the same shall be so applied, published by him, hath thereon, if the article of manufacture be a woven fabric for printing, at one end thereof, or, if of any other kind or such substance as aforesaid, at the end or edge thereof, or other convenient place thereon, the letters "Rd," together with such number or letter, or number and letter, and in such form as shall correspond with the date of the registration of such design according to the registry of designs in that behalf; and such marks may be put on any such article of manufacture or such substance, either by making the same in or on the material itself of which such article or substance shall consist, or by attaching thereto a label containing such marks.

Registration.

Marks denoting a registered design.

The term "proprietor" explained.

5. And be it enacted, that the author of any such new and original design shall be considered the proprietor thereof, unless he have executed the work on behalf of another person for a good or a valuable consideration, in which case

such person shall be considered the proprietor, and shall be entitled to be registered in the place of the author; and every person acquiring for a good or a valuable consideration a new and original design, or the right to apply the same to ornamenting any one or more articles of manufacture, or any one or more such substances as aforesaid, either exclusively of any other person or otherwise, and also every person upon whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

Transfer of copyright and register thereof.

6. And be it enacted, that every person purchasing or otherwise acquiring the right to the entire or partial use of any such design may enter his title in the register hereby provided, and any writing purporting to be a transfer of such design and signed by the proprietor thereof shall operate as an effectual transfer; and the registrar shall, on request and the production of such writing, or in the case of acquiring such right by any other mode than that of purchase on the production of any evidence to the satisfaction of the registrar, insert the name of the new proprietor in the register; and the following may be the form of such transfer and of such request to the registrar:

Form of Transfer, and Authority to register.

"I, A. B., author [*or* proprietor] of design, No. ——, having transferred my right thereto [*or if such transfer be partial*], so far as regards the ornamenting of —— [*describe the articles of manufacture or substances, or the locality with respect to which the right is transferred*] to B. C., of ——, do hereby authorize you to insert his name on the register of designs accordingly."

Form of Request to register.

"I, B. C., the person mentioned in the above transfer, do request you to register my name and property in the said design as entitled [*if to the entire use*] to the entire use of such design, [*or if to the partial use*] to the partial use of such design, so far as regards the application thereof [*describe the articles of manufacture, or the locality in relation to which the right is transferred*]."

But if such request to register be made by any person to whom any such design shall devolve otherwise than by transfer, such request may be in the following form:

"I, C. D., in whom is vested by [*state bankruptcy or otherwise*] the design, No. —— [*or if such devolution be of a partial right, so far as regards the application thereof*] to [*describe the articles of manufacture or substance, or the locality in relation to which the right has devolved*]."

Piracy of designs.

7. And for preventing the piracy of registered designs, be it enacted, that during the existence of any such right to the entire or partial use of any such design, no person shall either do or cause to be done any of the following acts with regard to any articles of manufacture or substances, in respect of which the copyright of such design shall be in force, without the license or consent in writing of the registered proprietor thereof; (that is to say),

No person shall apply any such design, or any fraudulent imitation thereof, for the purpose of sale, to the ornamenting of any article of manufacture, or any substance, artificial or natural, or partly artificial and partly natural:

No person shall publish, sell or expose for sale any article of manufacture, or any substance, to which such design, or any fraudulent imitation thereof, shall have been so applied, after having received, either verbally or in writing, or otherwise, from any source other than the proprietor of such design, knowledge that his consent has not been given to such application, or after having been served with or had left at his premises a written notice signed by such proprietor or his agent to the same effect.

Recovery of penalties for piracy.

8. And be it enacted, that if any person commit any such act he shall for every offence forfeit a sum not less than five pounds and not exceeding thirty pounds to the proprietor of the design, in respect of whose right such offence has been committed; and such proprietor may recover such penalty as follows:

In England, either by an action of debt or on the case, against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides; and if such proprietor proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city or borough, where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture, or in the design to which such summary proceeding relates, may issue a summons requiring such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending, either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending, or upon the oath or affirmation of one or

more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds as aforesaid for each offence, as to such justices doth seem fit; but the aggregate amount of penalties for offences in respect of any one design committed by any one person, up to the time at which any of the proceedings herein mentioned shall be instituted, shall not exceed the sum of one hundred pounds; and if the amount of such penalty or of such penalties, and the costs attending the conviction so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender, wherever the same happen to be in England; and the justices before whom the party has been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city or borough in England, where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels on demand; and every information and conviction which shall be respectively laid or made in such summary proceeding before two justices under this act, may be drawn or made out in the following forms respectively, or to the effect thereof, *mutatis mutandis*, as the case may require:

Form of Information.

"Be it remembered, That on the ——, at ——, in the county of ——, A. B. of ——, in the county of ——, [*or*, C. D. of ——, in the county of ——, at the instance and on the behalf of A. B. of ——, in the county of ——,] cometh before us —— and ——, two of her majesty's justices of the peace in and for the county of ——, and giveth us to understand that the said A. B. before and at the time when the offence hereinafter mentioned was committed, was the proprietor of a new and original design for [*here describe the design*], and that within twelve calendar months last past, to wit, on the ——, at ——, in the county of ——, E. F. of ——, in the county of ——, did [*here describe the offence*], contrary to the form of the act passed in the —— year of the reign of her present majesty, intituled 'An Act to 'consolidate and amend the Laws relating to the Copy-'right of Designs for ornamenting Articles of Manu-'facture.'"

Form of Conviction.

"Be it remembered, That on the —— day of ——, in the year of our Lord ——, at ——, in the county of ——, E. F. of ——, in the county aforesaid, is convicted before us —— and ——, two of her majesty's justices of the peace for the said county, for that he the said E. F. on the —— day of ——, in the year ——, at ——, in the county of ——, did [*here describe the offence*], contrary to the form of the statute in that case made and provided; and we the said justices do adjudge that the said E. F. for his offence aforesaid hath forfeited the sum of —— to the said A. B."

In Scotland, by action before the court of session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding; provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction or otherwise.

In Ireland, either by action in a superior court of law at Dublin, or by civil bill in the civil bill court of the county or place where the offence was committed.

Proviso as to action for damages.

9. Provided always, and be it enacted, that notwithstanding the remedies hereby given for the recovery of any such penalty as aforesaid, it shall be lawful for the proprietor in respect of whose right such penalty shall have been incurred (if he shall elect to do so) to bring such action as he may be entitled to for the recovery of any damages which he shall have sustained, either by the application of any such design or of a fraudulent imitation thereof for the purpose of sale, to any articles of manufacture or substances, or by the publication, sale or exposure to sale as aforesaid by any person, of any article or substance to which such design or any fraudulent imitation thereof shall have been so applied, such per-

son knowing that the proprietor of such design had not given his consent to such application.

Registration may in some cases be cancelled or amended.

10. And be it enacted, that in any suit in equity which may be instituted by the proprietor of any design, or the person lawfully entitled thereto, relative to such design, if it shall appear to the satisfaction of the judge having cognizance of such suit, that the design has been registered in the name of a person not being the proprietor or lawfully entitled thereto, it shall be competent for such judge, in his discretion, by a decree or order in such suit, to direct either that such registration be cancelled (in which case the same shall thenceforth be wholly void), or that the name of the proprietor of such design, or other person lawfully entitled thereto, be substituted in the register for the name of such wrongful proprietor or claimant, in like manner as is hereinbefore directed in case of the transfer of a design, and to make such order respecting the costs of such cancellation or substitution, and of all proceedings to procure and effect the same as he shall think fit; and the registrar is hereby authorized and required, upon being served with an official copy of such decree or order, and upon payment of the proper fee, to comply with the tenor of such decree or order, and either cancel such registration or substitute such new name, as the case may be.

Penalty for wrongfully using marks denoting a registered design.

11. And be it enacted, that unless a design applied to ornamenting any article of manufacture or any such substance as aforesaid be so registered as aforesaid, and unless such design so registered shall have been applied to the ornamenting such article or substance within the united kingdom of Great Britain and Ireland, and also after the copyright of such design in relation to such article or substance shall have expired, it shall be unlawful to put on any such article or such substance, in the manner hereinbefore required with respect to articles or substances whereto shall be applied a registered design, the marks hereinbefore required to be so applied, or any marks corresponding therewith or similar thereto; and if any person shall so unlawfully apply any such marks, or shall publish, sell, or expose for sale any article of manufacture, or any substance with any such marks so unlawfully applied, knowing that any such marks have been unlawfully applied, he shall forfeit for every such offence a sum not exceeding five pounds, which may be recovered by any person proceeding for the same by any of the ways hereinbefore directed with respect to penalties for pirating any such design.

Limitation of actions.

12. And be it enacted, that no action or other proceeding for any offence or injury under this act shall be brought after the expiration of twelve calendar months from the commission

of the offence; and in every such action or other proceeding the party who shall prevail shall recover his full costs of suit or of such other proceeding.

Justices may order payment of costs in cases of summary proceeding.

13. And be it enacted, that in the case of any summary proceeding before any two justices in England, such justices are hereby authorized to award payment of costs to the party prevailing, and to grant a warrant for enforcing payment thereof against the summoning party if unsuccessful, in the like manner as is hereinbefore provided for recovering any penalty with costs against any offender under this act.

Registrar, &c. of designs to be appointed.

14. And for the purpose of registering designs for articles of manufacture, in order to obtain the protection of this act, be it enacted, that the lords of the committee of privy council for the consideration of all matters of trade and plantations may appoint a person to be a registrar of designs for ornamenting articles of manufacture, and, if the lords of the said committee see fit, a deputy registrar, clerks, and other necessary officers and servants; and such registrar, deputy registrar, clerks, officers and servants, shall hold their offices during the pleasure of the lords of the said committee; and the commissioners of the treasury may from time to time fix the salary or remuneration of such registrar, deputy registrar, clerks, officers and servants; and, subject to the provisions of this act, the lords of the said committee may make rules for regulating the execution of the duties of the office of the said registrar, and such registrar shall have a seal of office.

Registrar's duties.

15. And be it enacted, that the said registrar shall not register any design in respect of any application thereof to ornamenting any articles of manufacture or substances, unless he be furnished, in respect of each such application, with two copies, drawings or prints of such design, accompanied with the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and the number of the class in respect of which such registration is made; and the registrar shall register all such copies, drawings or prints, from time to time successively, as they are received by him for that purpose; and on every such copy, drawing or print he shall affix a number corresponding to such succession; and he shall retain one copy, drawing or print, which he shall file in his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give ready access to the copies of designs so registered, he shall class such copies of designs, and keep a proper index of each class.

Certificate of registration of design.

16. And be it enacted, that upon every copy, drawing or print of an original design so returned to the person register-

ing as aforesaid, or attached thereto, and upon every copy, drawing or print thereof received for the purpose of such registration, or of the transfer of such design being certified thereon or attached thereto, the registrar shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and also the number of such design, together with such number or letter, or number and letter, and in such form as shall be employed by him to denote or correspond with the date of such registration; and such certificate made on every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall, in the absence of evidence to the contrary, be sufficient proof, as follows:—

Of the design and of the name of the proprietor therein mentioned having been duly registered; and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design; and

Of the provisions of this act, and of any rule under which the certificate appears to be made, having been complied with:

And any such writing purporting to be such certificate shall, in the absence of evidence to the contrary, be received as evidence, without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar.

Inspection of registered designs.

17. And be it enacted, that every person shall be at liberty to inspect any design whereof the copyright shall have expired, paying only such fee as shall be appointed by virtue of this act in that behalf; but with regard to designs whereof the copyright shall not have expired, no such design shall be open to inspection, except by a proprietor of such design or by any person authorized by him in writing, or by any person specially authorized by the registrar, and then only in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as to take a copy of any such design or of any part thereof, nor without paying for every such inspection such fee as aforesaid: provided always, that it shall be lawful for the said registrar to give to any person applying to him, and producing a particular design, together with the registration mark thereof, or producing such registration mark only, a certificate stating

whether of such design there be any copyright existing, and if there be, in respect to what particular article of manufacture or substance such copyright exists, and the term of such copyright, and the date of registration, and also the name and address of the registered proprietor thereof.

Application of fees of registration.

18. And be it enacted, that the commissioners of the treasury shall from time to time fix fees to be paid for the services to be performed by the registrar, as they shall deem requisite, to defray the expenses of the said office, and the salaries or other remuneration of the said registrar, and of any other persons employed under him, with the sanction of the commissioners of the treasury, in the execution of this act; and the balance, if any, shall be carried to the consolidated fund of the united kingdom, and be paid accordingly into the receipt of her majesty's exchequer at Westminster; and the commissioners of the treasury may regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for, and they may also remit or dispense with the payment of such fees in any cases where they may think it expedient so to do: provided always, that the fee for registering a design to be applied to any woven fabric mentioned or comprised in classes 7, 9 or 10, shall not exceed the sum of one shilling; that the fee for registering a design to be applied to a paper hanging shall not exceed the sum of ten shillings; and that the fee to be received by the registrar for giving a certificate relative to the existence or expiration of any copyright in any design printed on any woven fabric, yarn, thread or warp, or printed, embossed or worked on any paper hanging, to any person exhibiting a piece end of a registered pattern, with the registration mark thereon, shall not exceed the sum of two shillings and sixpence.

Penalty for extortion.

19. And be it enacted, that if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the commissioners of the treasury, he shall forfeit for every such offence fifty pounds to any person suing for the same by action of debt in the Court of Exchequer at Westminster; and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the commissioners of the treasury see fit.

Interpretation of act.

20. And for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows; (that is to say) the expression "commissioners of the treasury" shall mean the lord high treasurer for the time being, or the commissioners of her majesty's treasury

for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender.

Alteration of act.

21. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament.

SCHEDULES referred to by the foregoing Act.

Schedule (A).

Date of Acts.	Title.
27 Geo. 3, c. 38. (1787.)	An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes and Muslins, by vesting the Properties thereof in the Designers, Printers and Proprietors for a limited Time.
29 Geo. 3, c. 19. (1789.)	An Act for continuing an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes and Muslins, by vesting the Properties thereof in the Designers, Printers and Proprietors for a limited Time.
34 Geo. 3, c. 23. (1794.)	An Act for amending and making perpetual an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes and Muslins, by vesting the Properties thereof in the Designers, Printers and Proprietors for a limited Time.
2 Vict. c. 13. (1839.)	An Act for extending the Copyright of Designs for Calico Printing to Designs for printing other woven Fabrics.

Schedule (B).

Date of Act.	Title.
2 Vict. c. 17. (1839.)	An Act to secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited Time.

SCHEDULE (C).

Date of Acts.	Title.
38 Geo. 3, c. 71. (1798).	An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned.
54 Geo. 3, c. 56. (1814.)	An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned, and for giving further Encouragement to such Arts.

6 & 7 VICT. c. 65.

An Act to amend the Laws relating to the Copyright of Designs. [22nd August, 1843.]

WHEREAS by an act passed in the fifth and sixth years of the reign of her present majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," there was granted to the proprietor of any new and original design, with the exceptions therein mentioned, the sole right to apply the same to the ornamenting of any article of manufacture, or any such substance as therein described, during the respective periods therein mentioned: and whereas it is expedient to extend the protection afforded by the said act to such designs hereinafter mentioned, not being of an ornamental character, as are not included therein: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that this act shall come into operation on the first day of September, one thousand eight hundred and forty three. 5 & 6 Vict. c. 100. Commencement of act.

2. And with regard to any new or original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and that whether it be for the whole of such shape or configuration or only for a part thereof, be it enacted, that the proprietor of such design not previously published within the united kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from Grant of copyright.

the time of such design being registered according to this act : provided always, that this enactment shall not extend to such designs as are within the provisions of the said act, or of two other acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of his late majesty King George the Third, and intituled respectively " An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned," and " An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned."

Proviso.

38 Geo. 3, c. 71.

54 Geo. 3, c. 56.

Conditions of copyright.

3. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act unless such design have before publication thereof been registered according to this act, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every article of manufacture made by him according to such design, or on which such design is used, hath thereon the word " registered," with the date of registration.

Penalty for wrongfully using marks denoting a registered design.

4. And be it enacted, that unless a design applied to any article of manufacture be registered either as aforesaid or according to the provisions of the said first-mentioned act, and also after the copyright of such design shall have expired, it shall be unlawful to put on any such article the word " registered," or to advertise the same for sale as a registered article ; and if any person shall so unlawfully publish, sell, or expose or advertise for sale any such article of manufacture, he shall forfeit for every such offence a sum not exceeding five pounds nor less than one pound, which may be recovered by any person proceeding for the same by any of the remedies hereby given for the recovery of penalties for pirating any such design.

Floor or oil cloths included in class six.

5. And be it enacted, that all such articles of manufacture as are commonly known by the name of floor cloths or oil cloths shall henceforth be considered as included in class six in the said first-mentioned act in that behalf mentioned, and be registered accordingly.

Certain provisions of 5 & 6 Vict. c. 100, to apply to this act.

6. And be it enacted, that all and every the clauses and provisions contained in the said first-mentioned act, so far as they are not repugnant to the provisions contained in this act, relating respectively to the explanation of the term proprietor, to the transfer of designs, to the piracy of designs, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees of registration, and to the penalty for extortion, shall be applied and extended to this present act as fully and effectually, and to all intents

and purposes, as if the said several clauses and provisoes had been particularly repeated and re-enacted in the body of this act.

Appointment of registrar, &c.

7. And be it enacted, that so much of the said first-mentioned act as relates to the appointment of a registrar of designs for ornamenting articles of manufacture, and other officers, as well as to the fixing of the salaries for the payment of the same, shall be and the same is hereby repealed; and for the purpose of carrying into effect the provisions as well of this act as of the said first-mentioned act, the lords of the committee of the privy council for the consideration of all matters of trade and plantations may appoint a person to be registrar of designs for articles of manufacture, and, if the lords of the said committee see fit, an assistant registrar and other necessary officers and servants; and such registrar, assistant registrar, officers and servants shall hold their offices during the pleasure of the lords of the said committee; and such registrar shall have a seal of office; and the commissioners of her majesty's treasury may from time to time fix the salary or other remuneration of such registrar, assistant registrar and other officers and servants; and all the provisions contained in the said first-mentioned act, and not hereby repealed, relating to the registrar, deputy registrar, clerks, and other officers and servants thereby appointed and therein named, shall be construed and held to apply respectively to the registrar, assistant registrar, and other officers and servants to be appointed under this act.

Registrar's duties.

8. And be it enacted, that the said registrar shall not register any design for the shape or configuration of any article of manufacture as aforesaid, unless he be furnished with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible according to the judgment of the said registrar, together with the title of the said design, and the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address; and every such drawing or print, together with the title and description of such design, and the name and address of the proprietor aforesaid, shall be on one sheet of paper or parchment, and on the same side thereof; and the size of the said sheet shall not exceed twenty-four inches by fifteen inches; and there shall be left on one of the said sheets a blank space on the same side on which are the said drawings, title, description, name and address, of the size of six inches by four inches, for the certificate herein mentioned; and the said drawings or prints shall be made on a proper geometric scale; and the said description shall set

Drawings.

forth such part or parts of the said design (if any) as shall not be new or original; and the said registrar shall register all such drawings or prints from time to time as they are received by him for that purpose; and on every such drawing or print he shall affix a number corresponding to the order of succession in the register, and he shall retain one drawing or print which he shall file at his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give a ready access to the designs so registered, he shall keep a proper index of the titles thereof.

Discretionary power as to registry vested in the registrar.

9. And be it enacted, that if any design be brought to the said registrar to be registered under the said first-mentioned act, and it shall appear to him that the same ought to be registered under this present act, it shall be lawful for the said registrar to refuse to register such design otherwise than under the present act and in the manner hereby provided; and if it shall appear to the said registrar that the design brought to be registered under the said first-mentioned act or this act is not intended to be applied to any article of manufacture, but only to some label, wrapper or other covering in which such article might be exposed for sale, or that such design is contrary to public morality or order, it shall be lawful for the said registrar, in his discretion, wholly to refuse to register such design: provided always, that the lords of the said committee of privy council may, on representation made to them by the proprietor of any design so wholly refused to be registered as aforesaid, if they shall see fit, direct the said registrar to register such design, whereupon and in such case the said registrar shall be and is hereby required to register the same accordingly.

Proviso.

Inspection of index of titles of designs, &c.

10. And be it enacted, that every person shall be at liberty to inspect the index of the titles of the designs, not being ornamental designs, registered under this act, and to take copies from the same, paying only such fees as shall be appointed by virtue of this act in that behalf; and every person shall be at liberty to inspect any such design, and to take copies thereof, paying such fee as aforesaid; but no design whereof the copyright shall not have expired shall be open to inspection, except in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as to take a copy of such design, nor without paying such fee as aforesaid.

Interpretation of act.

11. And, for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows; (that is to say,) the expression "commissioners of the treasury" shall mean the lord high treasurer for the time being, or the commissioners of her majesty's treasury of the

united kingdom of Great Britain and Ireland for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number, and the masculine gender shall include the feminine gender as well as the masculine gender.

12. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament. Alteration of act.

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7 Vict. c. 12.

An Act to amend the Law relating to International Copyright. [10th May, 1844.

Whereas [*recites literary and dramatic acts*]. And whereas under or by virtue of the four several acts next herein-after mentioned; (that is to say,) an act passed in the eighth year of the reign of his late majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving and etching historical and other Prints, by vesting the Properties thereof in the Inventors or Engravers during the Time therein mentioned;" an act passed in the seventh year of his late majesty King George the Third, intituled "An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of designing, engraving and etching historical and other Prints; and for vesting in and securing to Jane Hogarth, Widow, the Property in certain Prints;" an act passed in the seventeenth year of the reign of his late majesty King George the Third, intituled "An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases;" and an act passed in the session of parliament held in the sixth and seventh years of the reign of his late majesty King William the Fourth, intituled "An Act to extend the Protection of Copyright in Prints and Engravings to Ireland;" (and which said four several acts are hereinafter, for the sake of perspicuity, designated as the Engraving Copyright Acts;) every person who invents or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design or invention causes or procures to be designed, engraved, etched or worked in mezzotinto, or chiaro-oscuro any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and every person

8 G. 2, c. 13.

7 G. 3, c. 38.

17 G. 3, c. 57.

6 & 7 W. 4, c. 59.

who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched or worked, any print taken from any picture, drawing, model or sculpture, either ancient or modern, notwithstanding such print shall not have been graven or drawn from the original design of such graver, etcher, or draftsman, is entitled to the copyright of such print for the term of twenty-eight years from the first publishing thereof; and by the said several engraving copyright acts it is provided that the name of the proprietor shall be truly engraved on each plate, and printed on every such print, and remedies are provided for the infringement of such copyright: and whereas under and by virtue of an
38 G. 3, c. 71. act passed in the thirty-eighth year of the reign of his late majesty King George the Third, intituled "An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned," and of an act passed
54 G. 3, c. 56. in the fifty-fourth year of the reign of his late majesty King George the Third, intituled "An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts and other things therein mentioned, and for giving further Encouragement to such Arts," (and which said acts are, for the sake of perspicuity, hereinafter designated as the Sculpture Copyright Acts,) every person who makes or causes to be made any new and original sculpture, or model or copy or cast of the human figure, any bust or part of the human figure clothed in drapery or otherwise, any animal or part of any animal combined with the human figure or otherwise, any subject, being matter of invention in sculpture, any alto or basso relievo, representing any of the matters aforesaid, or any cast from nature of the human figure or part thereof, or of any animal or part thereof, or of any such subject representing any of the matters aforesaid, whether separate or combined, is entitled to the copyright in such new and original sculpture, model, copy and cast, for fourteen years from first putting forth and publishing the same, and for an additional period of fourteen years in case the original maker is living at the end of the first period; and by the said acts it is provided that the name of the proprietor, with the date of the publication thereof, is to be put on all such sculptures, models, copies and casts, and remedies are provided for the infringement of such copyright, recites that the previous international act did not extend the privilege of copyright to prints and sculpture first published abroad.

2. Her majesty, by order in council, may direct that as to "books, prints, articles of sculpture and other works of art to be defined in such order," "first published in any foreign country to be named in such order, the authors, inventors,

designers, engravers and makers thereof respectively, their respective executors, administrators and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such order, not exceeding however" the term given to publication in England by the recited or any future acts.

3. Books.

4. All enactments in previous acts to apply to subjects of this act, unless excepted by the order.

5. Music and the drama.

6. Within a time to be prescribed by the order as regards prints, the title, name and abode of inventor, designer or engraver, and of the proprietor, and the time and place of the first publication in the foreign country, to be registered at Stationers' Hall, and a copy delivered upon the best paper on which the largest number of impressions is printed for sale; and as regards articles of sculpture or any other such work of art as aforesaid, a descriptive title, name and abode of maker, name of proprietor, and time and place of publication abroad.

7. If book anonymous, omit author's name.

8. Mode of keeping registers; sum for making entry, one shilling.

9. Alteration of wrongful entries.

10. Books not to be imported from other countries than those named.

11. Deposit copies delivered within one month to British Museum.

12. Subsequent editions of books.

13. The term given by the order may vary with different countries and different classes of works.

14. The international right must be reciprocal.

15. Orders must be published in the London Gazette,

16. And laid before parliament,

17. And may be revoked.

18. Not to prevent translation of books.

19. No other copyright to exist in such works published abroad.

20. Interpretation.

21. May be repealed.

COPYRIGHT OF DESIGNS.

DESIGNS FOR ORNAMENTING ARTICLES OF MANUFACTURE.

Designs Office,
4, Somerset Place, Somerset House.

By the Consolidated Designs Copyright Act, 5 & 6 Vict. c. 100, commencing its operation the 1st September, 1842, a copyright or property is given to the authors or proprietors of original designs for ornamenting any article of manufacture or substance, for the various terms specified in the following classes :—

Class.	Article.	Copyright.
1.	Articles composed wholly or chiefly of metal.	3 years
2.	Articles do. do. do. wood.	3 „
3.	Articles do. do. do. glass.	3 „
4.	Articles do. do. do. earthenware	3 „
5.	Paper hangings	3 „
6.	Carpets, floorcloths and oil cloths	3 „
7.	Shawls (patterns printed)	9 months
8.	Shawls (patterns not printed)	3 years
9.	Yarn, thread or warp (printed)	9 months
10.	Woven fabrics (patterns printed, except those included in class 11)	9 „
11.	Woven fabrics, furnitures (patterns printed the repeat exceeding 12in. by 8in.)	3 years
12.	Woven fabrics (patterns not printed)	12 months
13.	Lace and all other articles	12 „

The rights conferred upon the authors or proprietors of original designs are subjected to the following conditions :—

1st. The design must be registered before publication.

2nd. After registration, every article of manufacture published by the proprietor, on which such design is used, must have thereon, or attached thereto, a particular mark, which will be exhibited on the certificate of registration.

These conditions being observed, the right of the proprietor is protected from piracy by a penalty of from five pounds to thirty pounds for each offence, each individual illegal publication or sale of a design constituting a separate offence. This penalty may be recovered by the aggrieved party either by action in the superior courts, or by a summary proceeding before two magistrates.

If a design be executed by the author on behalf of another person, for a valuable consideration, the latter is entitled to be registered as the proprietor thereof; and any person purchasing either the exclusive or partial right to use the design,

is in the same way equally entitled to be registered; and for the purpose of facilitating such transfers, a short form (copies of which may be procured at the registrar's office) is given in the act.

A penalty of five pounds is imposed in the case of any person who shall put the registration mark on any design not registered, or after the copyright thereof has expired, or when the design has not been applied within the united kingdom.

All designs of which the copyright has expired may be inspected at the registrar's office, on the payment of the proper fee; but no design, the copyright of which is existing, is in general permitted to be seen. Any person, however, may, by application at the office, and on production of the registration mark of any particular design, be furnished with a certificate of search, stating whether the copyright be in existence, and in respect to which article of manufacture it exists; also the term of such copyright and the date of registration, and the name and address of the registered proprietor. Any party may also, on the production of a piece of the manufactured article with the pattern thereon, together with the registration mark, be informed whether such pattern, supposed to be registered, be really so or not.

DIRECTIONS FOR REGISTERING.

All persons wishing to register a design must bring or send to the registrar's office two exactly similar copies thereof, for each class under which the same is proposed to be registered, together with the proper fees. These copies may consist either of portions of the manufactured articles (except carpets, oil cloths and woollen shawls), when such can conveniently be done (as in the case of paper hangings, calico prints, &c.), or else of prints or drawings (not in pencil), which, whether coloured or not, must be correct representations of the design, when the article is of such a nature as not to admit of being pasted in a book. Should the paper hangings or furnitures exceed forty-two inches in length, by twenty-three inches in breadth, drawings will be required; but they must not exceed these dimensions. These copies must be accompanied with the name and address, distinctly written or printed, of the proprietor or proprietors, or with the title of the firm under which he or they may be trading, and the place of carrying on business, and also with the number of that one of the above classes, in respect of which such design is intended to be registered. After the design has been registered, one of the two copies will be filed at the office, and the other returned to the proprietor, with a certificate annexed,

on which will appear the mark to be placed on each article of manufacture on which the design is used.

A design may be registered in respect of one or more of the above classes, according as it is intended to be employed in one or more species of manufacture; but two separate copies must be furnished, and a separate fee paid on account of each separate class, and all such registrations must be made at the same time.

It is expected that all persons bringing designs to be registered will compare such designs together before delivery, count them and examine their certificates previous to leaving the office, as no error can afterwards be attended to.

In case of the transfer of a registered design, a copy or the certified copy must be transmitted to the registrar, together with the forms, which can be procured at the office properly filled up and signed, the transfer will then be registered, and the copy returned with a certificate annexed.

All communications for the registration of designs may be made either through the general post, directed to "The Registrar of Designs, Designs Office, London," (and parcels so directed, containing designs, are not restricted in weight to sixteen ounces), or by any other mode of conveyance; and provided the carriage be paid and the proper fees, or a post office order for the amount, payable at the post office at No. 180, Strand, to James Hill Bowen, Esq., be enclosed, the designs will be duly registered, and the certified copies returned to the proprietor free of expense. Postage stamps, orders upon bankers or other persons, and country and Scotch bank notes cannot be received in payment of fees.

The Designs Office, No. 4, Somerset Place, Somerset House, is open every day between the hours of ten in the morning and four in the afternoon. Designs and transfers are registered from eleven until three.

The following are the fees ordered to be paid by the treasury:—

TABLE OF FEES.

Registering designs:—

Copyright.	£	s.	d.
Class 1, 3 years	3	0	0
Class 2, do.	1	0	0
Class 3, do.	1	0	0
Class 4, do.	1	0	0
Class 5, do.	0	10	0
Class 6, do.	1	0	0
Class 7, 9 months	0	1	0
Class 8, 3 years	1	0	0
Class 9, 9 months	0	1	0

Copyright.	£	s.	d.
Class 10, 9 months	0	1	0
Class 11, 3 years	0	5	0
Class 12, 12 months	0	5	0
Class 13, do.	0	5	0
Transfer	1	0	0
Certifying design same as registration fee, but for class 1	1	0	0
Cancellation or substitution	1	0	0
Search	0	2	6
Inspection of all the designs of which the copyright has expired each class	0	1	0
Inspection of all the designs registered under the act 2 & 3 Vict. c. 17	0	1	0
Taking copies of expired designs, each	0	1	0

Directions for registering articles of utility under the act 6 & 7 Vict. c. 65, may be procured at the office.

DIRECTIONS FOR REGISTERING AND SEARCHING.

REGISTERING.

Persons proposing to register a design for purposes of utility must bring or send to the registrar's office—

Two exactly similar drawings or prints thereof made on a proper geometric scale.

The title of the design.

The name and address of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place of abode or place of carrying on business, distinctly written or printed.

A description in writing sufficient to make intelligible the purpose of utility to be obtained by the shape or configuration of such design.

A short and distinct statement of such part or parts (if any) as shall not be new or original, and (if necessary) of such part or parts as shall be new and original.

Note.—The description and statement must be contained in separate paragraphs, and each must be strictly confined to what is above described.

The said two drawings or copies must, together with the title, name, &c. be on two separate sheets of paper or parchment, only one side of which must be written or drawn upon. Neither of these sheets must exceed in size twenty-four inches by fifteen inches, and on the same side as the drawings, &c., there must be left a blank space of the size of six inches by

four inches, upon which the certificate of registration will be placed.

As the act 6 & 7 Vict. c. 65, applies only to the shape or configuration of articles of utility, and not to any mechanical action, principle, contrivance or application (except in so far as these may be dependent upon, and inseparable from, the shape or configuration), no design will be registered the description of or statement respecting which shall contain any wording that shall be a suggestive of a claim for any such mechanical action, principle, contrivance or application.

With this exception all designs, the drawings and descriptions of which are properly prepared and made out, will be registered without reference to the nature or extent of the copyright sought to be thereby acquired; as proprietors of designs must use their own discretion in judging whether or not the design proposed for registration be for the shape or configuration of an article of utility coming within the meaning and scope of the act.

After the design has been registered, one of the drawings will be filed at the office, and the other returned to the proprietor duly stamped and certified.

Parties bringing designs to this office before twelve o'clock will be informed at four o'clock the same day whether they are approved of, and if so, they will be registered the following day, and the certified copies will be ready for delivery after three o'clock on that subsequent.

TRANSFERS.

In case of the transfer of a registered design, a copy thereof made on one sheet of paper, with a blank space left for the certificate, must be transmitted to the registrar, together with the forms of application (which may be procured at the office), properly filled up and signed; the transfer will then be registered, and the certified copy returned.

Proprietors of designs and agents must see that the title, names, &c. are correct on delivering their designs, and are expected to examine their certificates previous to leaving the office, as no error can afterwards be rectified.

SEARCHES.

An index of the titles and proprietors of all the registered designs for articles of utility is kept at the registrar's office, and may be inspected by any person, and extracts made from it.

All such designs, the copyright of which is expired, may be seen and copied at the office.

Any such designs, the copyright of which is unexpired,

may also be inspected, but copies are not allowed to be taken from them.

Directions for registering ornamental designs under the act 5 & 6 Vict. c. 100, may also be procured at the office.

The Registrar's Office, 4, Somerset Place, Somerset House, is open every day between the hours of ten in the morning and four in the afternoon, during which time inquiries and searches may be made. Designs and transfers are registered from eleven until three.

By order of the registrar,
J. H. Bowen, Clerk.

COPYRIGHT OF DESIGNS,

By the Act 6 & 7 Vict. c. 65.

DESIGNS FOR ARTICLES OF UTILITY.

Designs Office,
4, *Somerset Place, Somerset House.*

By the above-mentioned act a copyright of three years is given to the author or proprietor of any new and original design for the shape or configuration either of the whole or of part of any article of manufacture having reference to some purpose of utility, whether such article be made in metal or any other substance.

To obtain this protection, it is necessary—

1st. That the design should be registered before publication.

2nd. That after registration, every article of manufacture published by the proprietor, and made according to such design, or to which such design is applied, should have upon it the word "registered," with the date of registration.

In case of piracy of a design so registered, the same remedies are given, and the same penalties imposed (from five pounds to thirty pounds for each offence) as under the act for protecting ornamental design, 5 & 6 Vict. c. 100, and all the provisions contained in the latter act relating to the transfer of ornamental designs, in case of purchase or devolution of a copyright, are made applicable to those useful designs registered under this act.

In addition to this a penalty of not more than five pounds, nor less than one pound, is imposed upon all persons marking, selling or advertising for sale any article as "registered," unless the design for such article has been registered under one of the above-mentioned acts.

TABLE OF FEES.

	Stamp. £ s. d.	Fee. £ s. d.	Total. £ s. d.
Registering design	5 0 0	5 0 0	10 0 0
Certifying former registration	5 0 0	1 0 0	6 0 0
Registering and certifying transfer	5 0 0	1 0 0	6 0 0
Cancellation or substitution		1 0 0	1 0 0
Inspecting register, index of titles and names		0 1 0	0 1 0
Inspecting designs (expired copyrights) each volume		0 1 0	0 1 0
Taking copies of designs (expired copyright) each copy		0 2 0	0 2 0
Inspecting designs (unexpired copyrights) each design		0 5 0	0 5 0

NOTICE.

Parties are strongly recommended to read the act before determining to register their designs, in order that they may be satisfied as to the nature, extent and comprehension of the protection afforded by it, of which the registration will not constitute any guarantee.

All communications for the registration of designs, either for ornamental or useful purposes, may be made either through the general post, directed to the "Registrar of Designs, Designs Office, London," or by any other mode of conveyance; and provided the carriage be paid, and the proper fees, or a post office order for the amount, payable at the post office at No. 180, Strand, to James Hill Bowen, Esq., be enclosed, the designs will be duly registered, and the certified copies returned to the proprietor free of expense. Postage stamps, orders upon bankers or other persons, and Scotch and country bank notes cannot be received in payment of fees.

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